(1)

Supreme Court, U.S.
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No. _____

IN THE OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2000

Michael Barth, Petitioner,

v.

CHIEF JUDGE JUDITH S. KAYE, and ASSOCIATE JUDGES JOSEPH BELLACOSA, CARMEN BEAUCHAMP CIPARICK, HOWARD A. LEVINE, RICHARD D. SIMONS, GEORGE BUNDI SMITH, and VITO J. TITONE individually and in their official capacity as Judges of the Court of Appeals of the State of New York, New York State Board of Law Examiners and its Members (J. Does) individually and in their official capacity, New York Rules for Admission to the Bar 22 NYCRR §520 et seq., Rules of the New York State Board of Law Examiners § 6000 et seq. (herein-after the "NY Defendants"); CHIEF JUSTICE WILENTZ, JUSTICES CLIFFORD, HANDLER, POLLOCK, O'HERN, GARIBALDI, STEIN individually and in their official capacity as Judges of the Supreme Court of the State of New Jersey, the New Jersey Rules for Admission to the Bar NJR 1:21 et seq. (herein-after the "NJ Defendants"); Deborah T. Poritz, individually and in her official capacity as former Attorney General of the State of New Jersey; New Jersey Court Rule 4:30A ("Entire Controversy Doctrine"); New Jersey Court Rule 2:15-20 (Confidentiality); SETON HALL UNIVERSITY, a Corporation of the State of New Jersey, SETON HALL UNIVERSITY SCHOOL OF LAW, A Corporation of the State of New Jersey, THE BOARD OF REGENTS OF SETON HALL UNIVERSITY (J. Does), THE TRUSTEES OF SETON HALL UNIVERSITY (J. Does), THE TRUSTEES OF SETON HALL UNIVERSITY, SCHOOL OF LAW (J. Does 32 - 45), Dean RONALD J. RICCIO, Professor CAROL R. GOFORTH, Professor D MICHAEL RISINGER, MICHAEL ZIMMER individually and in their official capacities, (herein-after the "SHU Defendants"); The AMERICAN BAR ASSOCIATION, RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER

Michael Barth
P.O. Box 315
Liberty Corner, New Jersey 07938

10 pp

QUESTIONS PRESENTED

1. Whether Federal RICO statute becomes the statutory basis for personal jurisdiction in New York when New Jersey Attorney General, defending New Jersey Judges in New York federal court, violates RICO law by influencing New Jersey state court *ex parte*, and influences and defrauds New York federal action by asking New York federal court to rely for preclusion on the same New Jersey case? 18 U.S.C. § 1965.

2. Whether former New Jersey Attorney General Deborah Poritz committed an actionable tort under 42 U.S.C. 1983 that subjects her to personal jurisdiction under NYCPLR § 302? City of Monterey v. Del Monte Dunes at Monterey, Ltd, US 97-1235 (1999) (citation omitted)

3. Whether res judicata can apply when the Court accepts as true that the case relied on for preclusion was decided in violation of Racketeering Law to deprive litigant of a fair opportunity to litigate? Montana v. United States, 440 U.S. 147 (1979).

4. Whether the Rooker-Feldman doctrine prevents pursuit of the instant complaint in Federal Court when racketeering violated independent rights of plaintiff in state court and state court would not allow plaintiff to brings claim in state court? Supreme Court of Virginia v. Consumer Union of the United States, 462 U.S. 1137 (1983).

5. Whether the District Court applied the correct Supreme Court standard and gave greater preclusive effect to a state court judgment than the states would give to it? Maresse v. American Academy of Ortho. Surgeons, 470 U.S. 373 (1985); Migra v. Warren City Sch. Dist. Bd. Of Educ., 465 U.S. 75 (1984)

6. Whether *Sua Sponte* dismissal of complaint, without notice and opportunity to be heard, against New York Rules for Admission to the Bar 22 NYCRR 522 et seq. and Rules New York State Board of Law Examiners 6000 et seq., was sound in law, fact or in justice? Anderson National Bank v. Luckett, 321 U.S. 223 (1944).

7. Whether New York State Court Judges have absolute immunity from a damages suit under 42 U.S.C. 1983 or are liable for declaratory and injunctive relief as they possessed enforcement power? Supreme Court of Virginia v. Consumer Union of the United States, 462 U.S. 1137 (1983) *citing* Supreme Court of Virginia v. Consumers Union of the United States, Inc., 446 U.S. 719 (1980).

8. Whether Rule 11 and Appellate Procedure 38 sanctions and removing anonymous caption were inappropriate?

LIST OF PARTIES

PETITIONER-PLAINTIFF
Michael Barth

RESPONDENTS – DEFENDANTS

CHIEF JUDGE JUDITH S. KAYE and ASSOCIATE JUDGES JOSEPH BELLACOSA, CARMEN BEAUCHAMP CIPARICK, HOWARD A. LEVINE, RICHARD D. SIMONS, GEORGE BUNDI SMITH, VITO J. TITONE, individually and in their official capacity as Judges of the New York Court of Appeals.

New York State Board of Law Examiners and its Members (J. Does) individually and in their official capacity

New York Rules for Admission to the Bar 22 YNCRR 520 et seq.
New York State Board of Law Examiners Rules § 6000 et seq.

CHIEF JUSTICE WILENTZ, JUSTICES CLIFFORD, HANDLER, POLLOCK, O'HERN, GARIBALDI, STEIN individually and in their official capacity as Judges of the Supreme Court of the State of New Jersey

Deborah T. Poritz, individually and in her official capacity as former Attorney General of the State of New Jersey;

The New Jersey Rules for Admission to the Bar NJR 1:21 et seq.

New Jersey Court Rule 4:30A ("Entire Controversy Doctrine")

New Jersey Court Rule 2:15-20 (Confidentiality);

SETON HALL UNIVERSITY, a Corporation of the State of New Jersey SETON HALL UNIVERSITY SCHOOL OF LAW, A Corporation of the State of New Jersey, THE BOARD OF REGENTS OF SETON HALL UNIVERSITY (J. Does), THE TRUSTEES OF SETON HALL UNIVERSITY (J. Does), THE TRUSTEES OF SETON HALL UNIVERSITY, SCHOOL OF LAW (J. Does 32 - 45), Dean RONALD J. RICCIO, Professor CAROL R. GOFORTH, Professor D MICHAEL RISINGER, MICHAEL ZIMMER individually and in their official capacities, (herein-after the "SHU Defendants");

The AMERICAN BAR ASSOCIATION.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2000
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review two Orders below in the Second Circuit Court of Appeals in Barth v. Kaye, et al., 98-7764. One Order was filed September 6, 2000, the first on September 20, 1999.

OPINIONS BELOW

The Summary Order of September 6, 2000 that orders sanctions appears at Appendix A to the petition.

The Summary Order of September 20, 1999 appears at Appendix B to the petition. That orders affirms the district court's dismissal of the complaint, imposition of fees, and orders to show cause why additional sanctions should not be imposed.

The District Court Memorandum-Decision and Order filed December 15, 1997 appears at Appendix C to the petition. That Order dismisses the complaint against the Judges of the New York Court of Appeals; the NY Board of Law Examiners; NY Rules for Admission to the Bar and of the Board of Law Examiners.

The District Court Memorandum-Decision and Order dated February 24, 1998, appears at Appendix D to the petition. That Order removed an anonymous caption; dismissed the complaint against Deborah Poritz and the American Bar Association; refused to issue a subpoena *duces tecum*; and

ordered plaintiff to show cause why sanctions should not be imposed and the remaining defendants dismissed *sua sponte*.

The District Court Memorandum-Decision and Order dated April 21, 1998 appears at Appendix D. That Order dismissed the complaint against the Justices of the New Jersey Supreme Court; the New Jersey Rules for Admission to the Bar; certain Seton Hall Law School defendants; and ordered plaintiff to pay $1,500 in *sua sponte* sanctions to the ABA.

It does not appear the matter is designated for publication as the Court of Appeals indicated the Summary Order would not be published in the federal reporter. However, other orders in this case not designated for publication ended up published.

JURISDICTION

The United States Supreme Court has jurisdiction under 28 U.S.C. § 1254. This matter was final when the Second Circuit Court of Appeals filed an Order on September 6, 2000.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Appendix includes the following Constitutional and Statutory Provisions: The U.S. Constitution, Article IV §§ 1, 2; the Fourteenth Amendment; Federal Statute 18 U.S.C. §§ 1961, 1965; and 42 U.S.C. §§ 1983, 1985(3).

SUMMARY STATEMENT OF CASE AND RELATED CASES AND PROCEEDINGS

The relevant facts are disputed and the proceedings that took place in the lower courts and related cases are as follows:

Plaintiff attended Seton Hall Law School and completed the residency requirements to graduate in January 1994. Seton Hall arbitrarily refused to certify documents of the plaintiff's graduation to take the February and July 1994 New York Bar Exams. On that basis alone, plaintiff was denied the right to take both exams. Plaintiff petitioned the New York State Board of Law Examiners and the Court of Appeals for a waiver of the requirements of the filing of these papers certified by Seton Hall. The petition was denied. The Board indicated the rules for admission to the bar did not allow for a waiver of these documents. Plaintiff filed suit in the Southern District of New York against defendants including Seton Hall University School of Law. Anonymous v. Kaye, 1995 WL 617795 (S.D.N.Y. 1995), *aff'd* 104 F.3d 355 (2d Cir. 1996). Following the filing of that suit, Seton Hall issued the student's diploma, with the incorrect graduation date.

Prior to the ripening of the constitutional claims in this matter, plaintiff filed suit against former Seton Hall Associate Dean Zimmer in New Jersey Superior Court. Barth v. Zimmer, No. A-6632-93T2, N.J. Super. Ct. App. Div. March 24, 1995). The day of summary judgement oral arguments in that case, former New Jersey Attorney General Deborah Poritz met with the Superior Court Judge Dupuis in that case. Defendant Poritz was representing the New Jersey Supreme Court Judges in Anonymous v. Kaye. The District Court in this case accepts as true that Defendant Portiz met

with the New Jersey Superior Court judge to influence the decision in Barth so that defendant Poritz's then client could rely on Barth for preclusion in Anonymous and later cases.

The Southern District dismissed Anonymous v. Kaye for lack of venue and jurisdiction. It was also dismissed on preclusion from the Barth v. Zimmer case that the Northern District court and Court of Appeals accepted as true was decided in violation of Racketeering laws. The Southern District did not transfer the case to either the Northern District of New York or District Court of New Jersey where the Court indicated was venue and jurisdiction. The Southern District did grant an anonymous caption but would not permit an amended complaint to add the American Bar Association. Anonymous v. Kaye, 1995 WL 617795 (S.D.N.Y. 1995), *aff'd* 104 F.3d 355 (2d Cir. 1996)

The basis of the Superior Court action against Zimmer was that Zimmer lacked authority under the school rules to act as a prosecutor, judge and jury to declare that the plaintiff violated a school rule. Since the school rules did not permit Zimmer to have original jurisdiction, the school rules did not permit an appeal of Zimmer's decision. The school rules permitted the filing of a counter-claim. Before the hearing on the counter-claim, Zimmer falsified the record on which his decision was based. (Similar to Zimmer's admission in New Jersey Superior Court that he substituted evidence.) The committee accepted results of a polygraph exam that the plaintiff did not intend to violate any school rule, a prerequisite for what Zimmer accused the plaintiff. So the student was not suspended for any length of time. Zimmer testified before the Superior Court that plaintiff would graduate without incident. When Seton Hall refused to certify plaintiff's graduation for the New York bar, plaintiff

requested excused joinder of claims in the New Jersey court as they lacked jurisdiction over certain claims. The Superior Court refused to sever the case nor allow an amended complaint. The Superior court said the student received due process in Barth; a decision the Northern District of New York accepts as true was decided and influenced in violation of Federal Racketeering laws.

Plaintiff filed suit in the Northern District of New York. The complaint indicates plaintiff was denied rights secured under the Fifth and Fourteenth Amendments, U.S. Const. Art. IV, and 42 U.S.C. §§ 1983, 1985(3) and that Defendant Poritz also violated Racketeering laws 18 U.S.C. §§ 1961. The unconstitutional delegation of power by the NJ Supreme Court and the NY Court of Appeals to the ABA and Seton Hall injured the plaintiff's business and property. The New Jersey and New York Rules for Admission to the Bar are unconstitutional. See Complaint (citation omitted.)

The District Court dismissed all counts, several *sua sponte*. Appendix C-E. No discovery was conducted. The Court of Appeals affirmed the District Court without reviewing any issue *de novo*. Appendix A-B. Both the District Court and Court of Appeals inappropriately sanctioned the plaintiff.

REASONS FOR GRANTING THE PETITION

There are compelling reasons for the exercise of the United States Supreme Court's jurisdiction in this matter. The decisions below conflict with previous decisions of this Court and other Circuit Courts of Appeals. The decision of the lower court is erroneous. There is national importance in deciding the questions involved.

STATEMENT OF THE ISSUES

Point I Federal RICO statute becomes the statutory basis for personal jurisdiction in New York when New Jersey Attorney General, defending New Jersey Judges in New York federal court, violates RICO law by influencing New Jersey state court *ex parte*, and influences and defrauds New York federal action by asking New York federal court to rely for preclusion on the same New Jersey case. 18 U.S.C. § 1965.

The Northern District Court accepted as true that "Deborah Poritz, former Attorney General of New Jersey, met with New Jersey Superior Court Judge in an effort to influence the outcome of a 'related Southern District Case' and that 'Deborah Poritz acted corruptly, that is, with the intent to influence, obstruct, or impede the Federal proceeding in its due administration of justice. Memorandum-Decision and Order, February 28, 1998 II.B. (*citing* Hoffritz for Cutlery, Inv. V. Amajac Ltd., 763 F.2d 55, 57 (CA2 1985). Pursuant to statute, this was an obstruction of justice in violation of Racketeer Influenced and Corrupt Organization Act (RICO) laws. 18 U.S.C. § 1961 et seq. (1970).

18 U.S.C. § 1965 provides for nationwide service of process in RICO cases. When a federal statute provides for nationwide service of process, it is the statutory basis for personal jurisdiction. In re Chase & Sanborn Corp. 835 F.2d 1341, 1344 (CA11 1988), *rev'd on other grounds sub. nom,* Granfiancieria, S.A. v. Nordberg, 492 U.S. 33 (1989); Lisak v. Mercantile Bancorp, Inc., 834 F.2d 668, 671 (CA 7 1987) (section 1965 "creates personal jurisdiction by authorizing service"), *cert. denied* 485 U.S. 1007 (1988). In analyzing a motion to dismiss for lack of personal jurisdiction under F.R.C.P. 12(b)(2), a court must first determine whether the applicable statute potentially confers jurisdiction over the defendant, and then determine whether the exercise of jurisdiction comports with due process. Go-Video, Inc. v. Akai Elec. Col., Ltd., 885 F.2d 1406, 1413 (CA9 1989). Republic of Panama v. BCCI Holdings (Luxembourg) S.A., 119 F.2D 935, 942 (CA11 1997) (§1965(d) provides nationwide jurisdiction over RICO defendants.); Butcher's Union Local No. 498 v. SDC Investment Inc., 788 F.2d 535, 538-39 (CA9 1986) (§1965 permitting nationwide service of process).

In the instant case, the District Court completely ignored consideration of personal jurisdiction under the federal RICO statute. The court did not dismiss the RICO claims for failure to state a claim. The court dismissed the complaint against Deborah Poritz under the New York Civil Practice Law and Rules. Memorandum-Decision and Order, February 28, 1998. The decision below is inconsistent with the ruling of at least the United States Seventh, Ninth, and Eleventh Court of Appeals. The District Court committed reversible error in failing to recognize that the Federal RICO statute becomes the statutory basis for personal jurisdiction in New York in this matter

POINT II Former New Jersey Attorney General Deborah Poritz committed an actionable tort under 42 U.S.C. 1983 that subjects her to personal jurisdiction under NYCPLR § 302. City of Monterey v. Del Monte Dunes at Monterey, Ltd, US 97-1235 (1999) (citation omitted)

The District Court dismissed the complaint against Deborah Poritz indicating it lacked personal jurisdiction under New York Civil Practice Law and Rules (NYCPLR): §301 (Corporation doing business and presence in New York); §302 (c1) transacts business within state or contract anywhere to supply services in the state; §302 (c) (2) tortious act occurred within the state; §302 (c) (3) tortious act occurred outside the state causing injuries within the state; or 302(c) (4) defendant owns, uses or possesses any real property situated within the state. Order, February 28, 1998 II.B. Not only did the district court commit reversible error in failing to consider jurisdiction under the federal RICO statute, it failed to recognize that even under the NYCPLR, Deborah Poritz is subject to personal jurisdiction in New York.

According to United States Supreme Court standards, under 42 U.S.C. § 1983, Deborah Poritz committed a tort in New York. Justice Scalia recently summarized some of the countless cases that a §1983 cause of action sounds in tort. City of Monterey v. Del Monte Dunes at Monterey, Ltd, US 97-1235 (1999) (citation omitted) *citing* Imbler v. Pachtman, 424 U.S. 409, 417 (1976); Heck v. Humprey, 512 U.S. 477, 483 (1994); Memphis Community School Dist. V. Stachura, 477 U.S. 299, 305 (1986); Smith v. Wade, 461 U.S. 30, 34 (1983); Carey v. Piphus, 435 U.S. 247, 253 (1978). In City of Monterey, Justice Scalia also summarized some of the

countless cases that a violation of §1983 is a "constitutional tort". Crawford-El v. Britton, 523 U.S. 574, 600-601 (1998); Jefferson v. City of Tarrant, 522 U.S. 75, 78-79 (1997); McMillian V. Monroe County, 520 U.S. 781, 784 (1997); Richardson v. McKnight, 521 U.S. 399, 401 (1997); Johnson v. Jones, 515 U.S. 304, 307 (1995); Albright v. Oliver, 510 U.S. 266, 269 (1994); Seigert v. Gilley, 500 U.S. 226, 231 (1991); St. Louis v. Praprotnik, 485 U.S. 112, 121 (1988); Daniels v. Williams, 474 U.S. 327, 329 (1986).

In the instant case, the district court accepted as true that Deborah Poritz violated Racketeering laws to commit fraud in New York. The court did not dismiss the counts that she violated and conspired to violate plaintiff's civil rights in New York under 42 USC § 1983, Count IX and 42 U.S.C. § 1985, Count X. District Court Order, February 28, 1998. In those counts, former New Jersey Attorney General Deborah Poritz met with a New Jersey Superior Court Judge to deprive the plaintiff of his civil rights in the State of New York. On the day of Summary Judgment in the New Jersey Superior Court case that the district court relied upon for res judicata, Deborah Poritz met with the Superior Court judge in that New Jersey state case to influence the outcome of the action in order to deny plaintiff's rights in New York. *See* Complaint para 5 (citation omitted). Deborah Poritz violated plaintiff's rights, in part, by submitting pleadings in New York and asked the New York Court to rely on the New Jersey case she influenced. Moreover, in her pleading defendant Poritz did not contest ex parte communication with a judicial officer but admitted she met ex parte with various judges in the state of New Jersey. However, in the instant litigation, the ex parte communication was a violation of federal law and effected plaintiff's fundamental constitutional rights, including a fair trial in New York.

By Deborah Poritz own admissions she also transacts business in New York. In her December 3, 1997 memorandum, page 3-4, she admitted when she represents a state client she is "conducting business." In this case her agent, Mr. Catinello worked for Defendant Poritz at the time of the RICO and tort violation. Mr. Catinello appeared on behalf of Defendant Poritz in the New York Federal court action. Mr. Catinello "carried on" and "conducted business" on behalf of Defendant Poritz.

(It appears the court below never acted upon Deborah Poritz counsel's motion to be admitted *pro hac vice*. Plaintiff opposed the motion, in part, on opposing counsel's failure to comply with the rules of court. The District Court also committed reversible error by not ordering a Subpoena Duces Tecum that can be addressed upon remand.)

In addition to committing reversible error under the RICO statute, the district court committed reversible error by dismissing the complaint for lack of jurisdiction under NYCPLR section 302.

POINT III Res Judicata cannot apply when the Court accepts as true that the case relied on for preclusion was decided in violation of Racketeering Law to deprive litigant of a fair opportunity to litigate. Montana v. United States, 440 U.S. 147, 153 (1979).

For res judicata, the district court primarily relied on a case it accepts as true was influenced in violation of Racketeering laws. Order, February 28, 1998 II.B. The United States Supreme Court has made it clear that Due process imposes an added requirement for res judicata to apply. The

precluded party must have had a "full and fair opportunity to litigate" the case in the earlier proceeding. Montana v. United States, 440 U.S. 147, 153 (1979); Allen v. McCurry, 449 U.S. 90, 95 (1980) (Res Judicata cannot be applied unless the plaintiff had a full and fair opportunity to litigate all its claims in the original action.) *See also* Napue v. Illinois, 360 U.S. 264, 269 (1959) (Conviction obtained through use of false evidence, known to be such by representatives of the government, must fall under the Fourteenth Amendment.) Miller v. Pate, 386 U.S. 1 (1967) (false "blood" on shorts). Giglio v. United States, 405 U.S. 150, 154 (1972) ("The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears."); United States v. Utah Construction Co., 384 U.S. 394, 422 (1966) (Necessary predicate of issue preclusion is that the party must have fair opportunity to argue their version of the facts.); Johnson v. DeGrandy, 114 S.Ct. 2647 (1994) (Court properly refused to give preclusive effect to the State Supreme Court's decision.)

The District court never determined how the outcome of a case influenced in violation of the Racketeering laws could be deemed due process or fair. Yet the court dismissed the complaint against the New Jersey Supreme Court Judges and Court Rules; the American Bar Association; and various Seton Hall defendants on a case it accepts as true was decided in violation of RICO laws. A case decided in violation of RICO laws cannot be said to be fair and must fall under the Fourteenth Amendment. Accordingly, preclusion could not be applied in this matter.

POINT IV The Rooker-Feldman doctrine does not prevent pursuit of the instant complaint in Federal Court when racketeering violated independent rights of plaintiff in state

court and state court would not allow plaintiff to brings claim in state court. Supreme Court of Virginia v. Consumer Union of the United States, 462 U.S. 1137 (1983).

The District Court dismissed *sua sponte* the complaint against the Judges of the New Jersey Supreme Court and three New Jersey Court rules: 1:21, 4:30A and 2:15-20. Memorandum-Decision and Order February 24, 1998. Included in the complaint were counts that the New Jersey defendants violated plaintiff's civil rights under 42 U.S.C. 1983. Although not completely clear, it appears the Northern District Court dismissed the counts based on the Rooker-Feldman doctrine and the New Jersey Entire Controversy Doctrine. The Court of Appeals affirmed the District court without any standard of review.

As an initial matter, the New Jersey Supreme Court judges do not have absolute immunity from a damages suit under 42 U.S.C. 1983 and are liable for declaratory and injunctive relief as they possessed enforcement power. Supreme Court of Virginia v. Consumer Union of the United States, 462 U.S. 1137 (1983) *citing* Supreme Court of Virginia v. Consumers Union of the United States, Inc., 446 U.S. 719, 734, (1980). The decision below is also in opposite the Seventh Circuit that held the Rooker-Feldman doctrine could not block federal suit under 42 U.S.C. 1983 when a conspiracy between the opposing party's lawyers and the judges violated independent rights of a party in state court. Nesses v. Shepard, 68 F.3d 1003 (CA7 1995).

The decision is inopposite to the Eleventh Circuit that ruled the Rooker-Feldman doctrine could not apply when a party is denied opportunity to raise certain issues. Wood v. Orange County, 715 F.2d 1543, 1547 (CA 11 1983). There was

never any showing the plaintiff ever had a realistic opportunity to raise his federal claims in state court. The issues here are not inextricably intertwined with a state court judgment. For example, plaintiff never asked the New Jersey Court for a waiver as the plaintiff sought to take the New York and not the New Jersey Bar exam.

The Supreme Court has recognized a party cannot receive a "fair opportunity" to litigate a challenge to court rules in the same court system that created the rules. As shown *infra* for example, plaintiff asked for excused joinder in the state court. The state court was required to either grant excused joinder or order joinder. Instead, the state court judge met *ex parte* with opposing counsel in this federal matter and cut short discovery. *See* Robinson v. Ariyoshi, 753 F.2d 1468, 1472-73 (CA 9 1985) (Rooker-Feldman inapplicable because the Hawaii Supreme Court refused to consider these claims during the state court proceedings), *vacated on other grounds*, 477 U.S. 902 (1986).

In addition, *sua sponte* dismissal against the New Jersey Defendants was inappropriate as Default should have been entered. F.R.C.P. 4(e) provides that service may be effected upon an individual by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process or pursuant to the law of the state in which the district court is located. Applying New York State law, personal service upon a court consisting of three or more judges may be made by delivering the complaint and summons to any one of them N.Y.C.P.L.R. § 312. Deborah Poritz, then New Jersey Supreme Court Justice, admitted to receiving service.

Accordingly, the Rooker-Feldman doctrine cannot prevent pursuit of the instant complaint in Federal Court.

Point V The District Court applied incorrect Supreme Court standard and gave greater preclusive effect to a state court judgment than the states would give to it. Maresse v. American Academy of Ortho. Surgeons, 470 U.S. 373 (1985); Migra v. Warren City Sch. Dist. Bd. Of Educ., 465 U.S. 75, 81 (1984).

A District Court cannot give greater preclusive effect to a state court judgment than the states would give to it. Maresse v. American Academy of Ortho. Surgeons, 470 U.S. 373 (1985). A federal court presented with a state court judgment must give that judgment the same force and effect that it would have in the state where it was rendered. Migra v. Warren City Sch. Dist. Bd. Of Educ., 465 U.S. 75, 81 (1984).

In New Jersey under the entire controversy doctrine, res judicata does not apply when court declines to exercise jurisdiction over a claim. Jones v. Holvey, 94-5011 (3rd Cir. July 21, 1994) *citing* Watkins v. Resorts Int'l Hotel & Casino, 591 A.2d 529 (N.J. 1991). A case decided in violation of RICO cannot be preclusive under the Entire Controversy Doctrine. Ditrolio v. Antiles, 142 N.J. 253 (1995) (must have fair opportunity); Nanavate v. Burdette Tomlin Memorial Hosp., 857 F.2d 96 (CA 3 1988) (anti-trust claims not precluded by any state court decision; Bernardsville Quarry v. Borough of Bernardsville, 929 F.2d 927, 930 (3rd. Cir. 1991) (doctrine does not apply when state court informed of intent to go to federal court to litigate federal claim.)

In the District Court opinion of February 24, 1998, it dismissed the complaint against the American Bar Association under New York law, the transactional approach to *res judicata*. This is in opposite to United States Supreme Court precedent and is reversible error.

In addition to the District Court's acceptance of the RICO violation, plaintiff first sought to bring the ABA as a defendant in the Southern District action. Plaintiff sued the ABA with claims including violation of federal anti-trust laws. Judge Keenan did not permit this filing but indicated plaintiff had to sue in both the Northern District of New York as well as the District Court of New Jersey. It was the court that wanted multi-district litigation.

Furthermore, plaintiff sought excused joinder of claims in the New Jersey state court after the constitutional claim ripened. The state court did not grant severance nor would allow joinder. This included both claims the court may have had and certainly those the state court lacked jurisdiction. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) (A Federal District Court possesses subject matter jurisdiction on a constitutional challenge to bar admission rules.)

The Court below committed reversible error in applying the incorrect Supreme Court standard and giving greater preclusive effect to a state court judgment than the states would give.

POINT VI *Sua Sponte* dismissal of complaint, without notice and opportunity to be heard, against New York Rules for Admission to the Bar 22 NYCRR 522 et seq. and Rules New York State Board of Law Examiners 6000 et seq., was

not sound in law, fact or in justice. Anderson National Bank v. Luckett, 321 U.S. 223, 246 (1944).

It is unclear in the December 15, 1997 District Court Order, why the court dismissed *sua sponte* the Complaint against the Rules for Admission to the Bar and of the New York State Board of Law Examiners. The New York Attorney General merely filed a Rule 12(b) motion to dismiss the complaint against the New York State Board of Law Examiners and Judges of the New York State Court of Appeals. September 2, 1997. Their defense was based on the Eleventh Amendment, Immunity, and the Rooker-Feldman Doctrine. Nowhere did they address the constitutional challenge to the Rules mentioned above. Moreover, on a motion for reconsideration, the New York Attorney General's office admitted they did not move to dismiss the claim against the rules because they thought the rules had not been served.

Consistent with F.R.C.P. 8(a)(2), the complaint contained a "short and plain statement of the claim showing that the pleader is entitled to relief. Plaintiff identified the specific provisions being challenged to support the implication of a cause of action.

However, without any kind of notice and an opportunity to be heard, the District Court *sua sponte* dismissed the claim against the rules. The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked. Anderson National Bank v. Luckett, 321 U.S. 223, 246 (1944.) The dismissal without process of law offends the constitution. The district court should be reversed and the dismissal rendered void.

POINT VII New York State Court Judges do not have absolute immunity from a damages suit under 42 U.S.C. 1983 and are liable for declaratory and injunctive relief as they possessed enforcement power. Supreme Court of Virginia v. Consumer Union of the United States, 462 U.S. 1137 (1983) *citing* Supreme Court of Virginia v. Consumers Union of the United States, Inc., 446 U.S. 719 (1980).

The New York judges were charged with, inter alia, enforcing rules and regulations for admission to the bar in violation of 42 U.S.C. 1983. Count IX. The District court misapprehended Supreme Court precedent by ruling judges are entitled to absolute judicial and legislative immunity for actions relating to the promulgation of disciplinary rules. Supreme Court of Virginia v. Consumers Union of the United States, Inc., 446 U.S. 719, 734 (1980).

The District court also ruled the members of New York State Board of Law Examiners were entitled to qualified immunity. The court thought their conduct did not violate federal statutory or constitutional rights that were clearly established at the time. The court also thought that even if the complained of conduct did violate clearly established rights, it was objectively reasonable for the Board of Law Examiners to believe that their acts did not violate those rights. Order at II.B December 12, 1997.

Plaintiff had clear constitutional rights at the time. An individual possesses a Constitutional liberty and property interest in a law degree once beginning a course of study. Anderson v. University of Wisconsin, 665 F.Supp. 1372, 1396 (W.D.Wis. 1987) *aff'd* 841 F.2d 737 (7th Cir. 1988), citing Martin v. Helstad, 578 F.Supp. 1473, 1480 (W.D.Wis

1983); Board of Curators of the University of Missouri v. Horowitz, 435 U.S. 78, 84, 98 S.Ct. 948, 952 (1978) (constitutionally protected liberty or property interest in the pursuit of a medical degree.); Greenhill v. Bailey, 519 F.2d 5 (CA 8 1975) (student deprived of a significant interest in liberty in that it made it improbable that he would be able to pursue his medical education elsewhere.) The credits that make up scholastic degrees are afforded the same due process protection that those degrees are afforded. Merrow v. Goldberg, 672 F.Supp. 766 (D.C.V.T. 1987). Moreover, the right to take the bar exam is constitutionally protected on the same basis as an individual's right to qualify for the practice of law. Greene v. McElroy, 360 U.S. 474, 79 S. Ct. 1400 (1959); Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232, 77 S. Ct. 752 (1957) (applicant for state bar examination denied opportunity to qualify for the practice of law contrary to the Due Process Clause of the Fourteenth Amendment); In Re Griffiths, 413 U.S. 717, 93 S.Ct. 2851 (1973) (resident alien has constitutional right to take bar examination to qualify for the practice of law); Baccus v. Karger, 692 F.Supp. 290, 295 (S.D.N.Y. 1988) (The court found the practical effect of taking the bar exam is basically the same as admission to the bar and, therefore, admission to the practice of law. The court applied the same constitutional tests to examine an individual's right to take a bar examination as would be used to examine an individual's right to qualify for the practice of law.)

A "State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." Schware v. Board of Bar Examiners, 353 U.S. 232, 238-9 (1956). The root requirement of the Due Process Clause is that an individual

be given an opportunity for a hearing at a "meaningful time" before [that individual] is deprived of any significant property interest. *See* Boddie v. Connecticut, 401 U.S. 371, 379 (1971); Bell v. Burson, 402 U.S. 535 (1971); Goldberg v. Kelly, 397 U.S. 254, 267-68 (1970) (interest in continued receipt of benefits are safeguarded by procedural due process); Cleveland Bd. Of Education v. Loudermill, 470 U.S. 532 (1985); Armstrong v. Manzo, 380 U.S. 545, 552 (1965); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950).

A crucial question in examining delegation of power is the interests at issue and the risk of erroneous deprivation. The Supreme Court specifically rejects any delegation of power without adequate Fourteenth Amendment safeguards to "private" or state actors who can affect interstate activities. Highland Farms Dairy v. Agnew, 300 U.S. 608, 614 (1937) (Court does not condone private agency's regulation of intrastate activity.); Eubank v. Richmond, 226 U.S. 137 (1914); Polar Ice Cream & Creamery v. Andrews, 375 U.S. 361, 377 (1964) (Court rejected state agency regulation of interstate activities). The ABA and purported "private law schools" are state actors for purposes of Bar admission. Lombardi v. Tauro, 470 F.2d 798 (CA 5 1972) *cert denied* 412 U.S. 919 (State law requirement that candidates for admission to the state bar be graduates of a qualified law school inevitably causes a private law school to become affected with "state action".)

Plaintiff fulfilled the residency requirements to sit for the New York Bar exam regardless of any ludicrous plagiarism charge. Judge McAvoy himself admitted the law school did not suspend the student. The student took NO extra classes between the time the school refused to issue the diploma and

when the school finally issued the diploma. The administration at Seton Hall did not issue the diploma because they were incompetent, not anything the plaintiff had done. Only after plaintiff filed suit in federal district court did the school realize their error and issue the diploma. To take the New York bar exam, a law school does not certify "moral character," something the law school seemed to lack. They only have to certify a student completed enough courses and semesters to take the exam. The plaintiff completed the necessary residency requirements regardless of the school conducting its own cover-up and the New Jersey Attorney General breaking federal law to protect the New Jersey Court Judges.

Rules that rely on nothing more than arbitrary actions of a "private" university deny one's right to take the NY bar exam as protected by the Due Process Clause. Complaint para. 17 (citation omitted). Rules that allow discrimination against the plaintiff by permitting and relying upon the arbitrary, capricious and discriminatory acts of a supposed "private" university denies equal protection of the law. Complaint para. 18. Rules that give a "private" university authority to arbitrarily deny an opportunity to take the NY bar exam violates plaintiff's fundamental Fourteenth Amendment right to interstate travel. Complaint para. 13 (citation omitted).

If the Board of Law Examiners followed the rules as the Court indicates, then the Rules are unconstitutionally void of vagueness. Gentile v. State Bar of Nevada, 501 U.S. 1030 (1991) (Nevada Supreme Court, Rule 177 is void for vagueness.) By their own admissions defendants are involved in the process and policy that delegated unconstitutional power and caused at a minimum a

constitutional tort. Monell v. New York City Dept. of Soc. Servs., 436 U.S. 658 (1978). It is unconstitutional to delegate power without the minimum due process required by the Constitution. Plaintiff was erroneously deprived of property and liberty interests that adequate safeguards would have prevented.

It is clear the decision of the Board was not sound in law, fact or justice. Accordingly, the New York Court of Appeals Judges and the Board of Law Examiners are not immune from this suit.

POINT VIII Sanctions without review and removing anonymous caption were inappropriate. Cooter & Gell v. Hartmarx Corp. 496 U.S. 384 (1990).

Both the district court and the court of appeals issued *sua sponte* orders to show cause for sanctions without providing an adequate basis for its order. Neither gave particularized notice that allowed an opportunity to be heard. Plaintiff expressed concern as to the district court's randomness. Both the district court and the court of appeals lack of explanation prevented meaningful review of the imposition of sanctions and is an abuse of discretion. Moreover, the appellate court did not apply any standard in reviewing any aspects of the district court's Rule 11 determination. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 399 (1990) (test whether violated Rule 11 under de novo standard and choice of sanctions under abuse of discretion.) Furthermore, the Court of appeals did not review *de novo* the dismissal of the complaint for failure to state a claim as required by this Court. Conley v. Gibson, 355 U.S. 41 (1957). The Court of Appeals did not review *de novo* the dismissals for lack of

personal jurisdiction as is held in at least the First, Seventh, and Tenth Circuits (citations omitted).

In each of the District court Orders, the court indicates it recognized that the Southern District court wanted multi-district litigation: proper venue in the Northern District of New York and personal jurisdiction in the District of New Jersey for other defendants. Yet ironically Judge McAvoy complains: "Not content to fight his battle on only one front, Plaintiff filed, while his appeal to the Second Circuit was pending, a lengthy complaint in New Jersey federal court. February 24, 1998.

The previous dismissal by the Southern District was burdensome in light of the inevitable re-filing. Plaintiff should not be sanctioned because the previous court did not transfer the case. Goldlaur Inc. v. Heiman 369 U.S. 463, 467 (1962) (Case should be transferred to save parties the time and expense of refiling this lawsuit in a different district.); 28 U.S.C. § 1406(a). The district court could have transferred the case even without jurisdiction. Id.

The court of appeals affirmed the district court dismissing plaintiff's complaint and entered sanctions "for substantially the reasons set forth in the lower court opinions." By Order September 6, 2000 the Court of Appeals states appellant failed to file a response to show either the appeal was not frivolous or good reason why damages and costs should not be paid to appellees. Clearly the court had no basis for its sanctions as it cited NO authority for its decision. *See* F.R.C.P. (3) "Explain the basis for the sanctions imposed." Clearly a matter of first impression cannot be sanctioned when no authority was cited. Moreover, plaintiff provided support for a meritorious argument. For example,

The New York Rules for Admission to the Bar and Rules New York State Board of Law Examiners have the capacity to be sued District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). The District Court possessed subject matter jurisdiction as the complaint presented, inter alia, constitutional challenge to bar admission rules. Id. The face of the Complaint was marked as a constitutional challenge and stated the rules are unconstitutional and violate the Right to Interstate Travel (Count V), Privileges and Immunities (Count VI), Due Process (Count VII) and Equal Protection (Count VIII). Neither the district court nor opposing counsel ever suggested the rules did not have the capacity to be sued. The defense of lack of capacity to be sued was waived. *See Fed. R. Civ. P. 9(a).* As stated above, the district court dismissed sua sponte without notice and opportunity to be heard the claims against the New York Rules for Admission to the Bar and Rules New York State Board of Law Examiners, the Court of appeals. The district court dismissed the counts for failure to state a claim. The District Court did not dismiss the claims for lack of jurisdiction. Having the capacity to be sued, default judgment could have been entered against the rules. Bally Export Corp. v. Balicar, Ltd., 804 F.2d 398, 400 (7th Cir. 1986) (Could set aside default judgment as a per se abuse of discretion if the district court that entered the judgment lacked jurisdiction.) However, contrary to law, the Court of Appeals sanctioned plaintiff for suggesting a default should be entered against the rules even though the court below and opposing counsel waived the defense. This is in addition to the fact the court never clearly identified what was the basis of its order to show cause. The Court of appeals did not cite one case in support of its sanction ruling. This is clearly inopposite Supreme Court precedent where it indicates

sanctions can only be applied where the law was clear. This being an apparent matter of first impression, clearly *sua sponte* sanctions were not appropriate.

It is also not clear why the district court removed the anonymous caption. The Southern District granted the anonymous caption as a matter of fact and law on an order to show cause. Opposing counsel consented to an anonymous caption. Prior to the filing of that complaint, Hope Engel, Staff Attorney for the New York Court of Appeals, indicated there was no need to seek the consent of opposing parties because the plaintiff was entitled to an anonymous caption as a matter of law. Ms. Engel *citing* § 90.10 New York Judiciary Law. The New Jersey District Court granted an anonymous caption after the Southern District ruled in favor of multi-district litigation. Plaintiff has clearly not abused the court system. Conversely, plaintiff has yet to get his day in court.

From this brief, it is clear petitioner legal arguments are arguable on the merits. It is clear the appeal was meritorious, not frivolous. Sanctions are inappropriate. In the interests of Justice, the Rule and Appellate Procedure 38 sanctions should be reversed, an anonymous caption should be granted or order the court to grant an extra damage award for the loss of the anonymous caption.

CONCLUSION

For the reasons stated and in the interest of justice, the undersigned respectfully requests that the Court grant certiorari and reverse the decisions of the courts below.

Respectfully submitted,

Michael Barth, Plaintiff *Pro Se*
Liberty Corner, New Jersey 07938
November 26, 2000

APPENDIX

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 6th day of September, two thousand.

PRESENT: HON. JOSEPH M. McLAUGHLIN,
HON. DENNIS JACOBS,
Circuit Judges,
HON. COLEEN McMAHON,*
District Judge.

98-7764,
UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED September 6, 2000
ROSEANN B. MACKECHNIE, Clerk

MICHAEL S. BARTH, Plaintiff-Appellant,

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* The Honoroable Colleen McMahon of the United States District Court for the Suthern District of New York, sitting by designation.

v.

CHIEF JUDGE JUDITH S. KAYE, ASSOCIATE JUDGES JOSEPH W. BELLACOSA, CARMEN BEAUCHAMP , CARMEN BEAUCHAMP CIPARICK, HOWARD A. LEVINE, RICHARD D. SIMONS, GEORGE BUNDI SMITH, and VITO J. TITONE individually and in their official capacity as Judges of the Court of Appeals of the State of New York, New York Board of Law Examiners and its members (J. Does) individually and in their official capacity, New York Rules for Admission to the Bar 22 N.Y.C.R.R. 520 et seq., Rules of the New York State Board of Law Examiners, §§ 6000 et seq. (hereinafter the "NY Defendants"), CHIEF JUSTICE WILENTZ, JUSTICES CLIFFORD, HANDLER, POLLOCK, O'HERN, BARIBALDI, STEIN individually and in their official capacity as Judges of the Supreme Court of the State of New Jersey, the New Jersey Rules for Admission to the Bar NJR 1:21 et seq., (hereinafter the "NJ Defendants"), DEBORAH T. PORITZ, individually and in her official capacity as former Attorney General of the State of New Jersey; SETON HALL UNIVERSITY, a corporation of the State of New Jersey, SETON HALL UNIVERSITY SCHOOL OF LAW, a corporation of the State of New Jersey, BOARD OF REGENTS OF SETON HALL UNIVERSITY, THE TRUSTEES OF SETON HALL UNIVERSITY SCHOOL OF LAW, Dean RONALD J. RICCIO, Professor CAROL R. GOFORTH, Professor D MICHAEL RISINGER, MICHAEL ZIMMER individually and in their official capacities (hereinafter the "SHU defendants") and AMERICAN BAR ASSOCIATION, Defendants-Appellees.

APPEARING FOR APPELLANT:

MICHAEL S. BARTH pro se att'y
Liberty Corner, NJ

APPEARING FOR APPELLEE:

(Dennis C. Vacco, Attorney General of the State of New York, Peter H. Schiff, Deputy solicitor General, Wayne L. Benjamin, Assistant Solicitor General, Frank K. Walsh, Assistant Attorney General, New York, NY, on the brief), for Defendant-Appellees Kaye, Bellacosa, Ciparick, Levine, Simons, Smith, Titone and the New York State Board of Law Examiners.

JAMES D. ARDEN, Sidley & Austin, New York, NY (Julie A. Torrey, on the brief), for Defendant-Appellee American Bar Association.

ORDER AWARDING COSTS AND DAMAGES

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that attorneys' fees and double costs are **AWARDED**

Plaintiff-appellant Michael S. Barth appealed the judgment of the United States District Court for the Northern District of New York (McAvoy, J.) dismissing his complaint, and entering sanctions in the amount of $1,500 payable to defendant-appellee American Bar Association. This Court entered an order in the above-captioned appeal on September 20, 1999 (i) affirming the district court's dismissal of the appellant's complaint, (ii) affirming the district court's imposition of fees, (iii) finding the arguments made by appellant on appeal to be frivolous, and (iv) ordering appellant to show cause why he should not be required

pursuant to Fed. R. App. P. 38 to pay sanctions of double costs and attorneys' fees of $3500 (in addition to the $1500 in fees awarded by the district court). Barth has filed a response that fails to show either that his appeal was not frivolous or good reason why he should not be required to pay damages and costs to the appellees. See In re 183 Lorraine St. Assocs., 92 F.3d 27, 27 (2d cir. 1996).

We therefore order that appellant Michael S. Barth shall, with respect to the above-captioned appeal, pay sanctions of double costs and attorneys' fees of $3500. These fees will be payable as attorneys' fees as follows: $2000 to the State of New York and $1500 to the American Bar Association. These fees will be in addition to the $1500 in fees awarded by the district court and affirmed by our previous order.

The sanctions of attorneys' fees and double costs are thereby **AWARDED**.

FOR THE COURT
ROSEANN B. MACKECHNIE, Clerk of Court

By:

Signed
Lucille Carr, Deputy Clerk

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 20th day of September, one thousand nine hundred and ninety-nine.

PRESENT: HON. JOSEPH M. McLAUGHLIN,
HON. DENNIS JACOBS,
Circuit Judges,
HON. COLEEN McMAHON,*
District Judge.

98-7764,
UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED September 20, 1999
KAREN GREVE MILTON, ACTING CLERK

MICHAEL S. BARTH, Plaintiff-Appellant,

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* The Honoroable Colleen McMahon of the United States District Court for the Suthern District of New York, sitting by designation.

v.

CHIEF JUDGE JUDITH S. KAYE, ASSOCIATE JUDGES JOSEPH W. BELLACOSA, CARMEN BEAUCHAMP , CARMEN BEAUCHAMP CIPARICK, HOWARD A. LEVINE, RICHARD D. SIMONS, GEORGE BUNDI SMITH, and VITO J. TITONE individually and in their official capacity as Judges of the Court of Appeals of the State of New York, New York Board of Law Examiners and its members (J. Does) individually and in their official capacity, New York Rules for Admission to the Bar 22 NYCRR 520 et seq., Rules of the New York State Board of Law Examiners, §§ 6000 et seq. (hereinafter the "NY Defendants"), CHIEF JUSTICE WILENTZ, JUSTICES CLIFFORD, HANDLER, POLLOCK, O'HERN, BARIBALDI, STEIN individually and in their official capacity as Judges of the Supreme Court of the State of New Jersey, the New Jersey Rules for Admission to the Bar NJR 1:21 et seq., (hereinafter the "NJ Defendants"), DEBORAH T. PORITZ, individually and in her official capacity as former Attorney General of the State of New Jersey; SETON HALL UNIVERSITY, a corporation of the State of New Jersey, SETON HALL UNIVERSITY SCHOOL OF LAW, a corporation of the State of New Jersey, BOARD OF REGENTS OF SETON HALL UNIVERSITY, THE TRUSTEES OF SETON HALL UNIVERSITY SCHOOL OF LAW, Dean RONALD J. RICCIO, Professor CAROL R. GOFORTH, Professor D MICHAEL RISINGER, MICHAEL ZIMMER individually and in their official capacities (hereinafter the "SHU defendants") and AMERICAN BAR ASSOCIATION, Defendants-Appellees.

APPEARING FOR APPELLANT:

MICHAEL S. BARTH pro se
Liberty Corner, NJ

APPEARING FOR APPELLEE:

(Dennis C. Vacco, Attorney General of the State of New York, Peter H. Schiff, Deputy solicitor General, Wayne L. Benjamin, Assistant Solicitor General, Frank K. Walsh, Assistant Attorney General, New York, NY, on the brief), for Defendant-Appellees Kaye, Bellacosa, Ciparick, Levine, Simons, Smith, Titone and the New York State Board of Law Examiners.

JAMES D. ARDEN, New York, NY (Julie A. Torrey, Sidley & Austin, on the brief), for Defendant-Appellee American Bar Association.

Appeal of the judgment of the United States District Court for the Northern District of New York (McAvoy, J.) dismissing plaintiff's complaint, and entering sanctions in the amount of $1,500 payable to defendant-appellee American Bar Association.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the district court is **AFFIRMED**.

We affirm the district court's dismissal of Barth's complaint and the imposition of fees for substantially the reasons set forth in the numerous lower court opinions in this case.

On appeal Barth argues that the district court failed to address his claim that default judgment should be entered

against three supposed party defendants that obviously lack capacity to be sued: the New York Rules for Admission to the Bar, the Rules of the New York State Board of Law Examiners, and the New Jersey Rules for Admission to the Bar.

The frivolous nature of this appeal is obvious. Therefore, we order Barth to show cause, by a written submission filed within 20 days of the date of this order, why sanctions of double costs and attorneys' fees of $3500 should not be imposed in this case.[1] See Fed. R. App. P. 38. Barth must show that the appeal was not frivolous or other good reason why he should not be required to pay attorneys' fees and double costs. See In re Lorraine Street Associates, 92 F.2d 27 (2d Cir. 1996).

The judgment of the district court is **AFFIRMED**.

FOR THE COURT
KAREN GREVE MILTON, Acting Clerk
By:

Signed
Lucille Carr, Deputy Clerk

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[1] These fees will be payable as attorneys' fees as follows: $2000 to the State of New York and $1500 to the American Bar Association. These fees will be in addition to the $1500 in fees awarded by the district court (and affirmed herein).

Appendix C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANONYMOUS, Plaintiff

-against-

CHIEF JUDGE JUDITH S. KAYE, and ASSOCIATE JUDGES JOSEPH BELLACOSA, CARMEN BEAUCHAMP CIPARICK, HOWARD A. LEVINE, RICHARD D. SIMONS, GEORGE BUNDI SMITH, and VITO J. TITONE individually and in their official capacity as Judges of the Court of Appeals of the State of New York, NEW YORK BOARD OF LAW EXAMINERS and its members individually and in their official capacity, NEW YORK RULES FOR ADMISSION TO THE BAR 22 NYCRR 520 ET SEQ., RULES OF THE NEW YORK STATE BOARD OF LAW EXAMINERS § 6000 ET SEQ.; CHIEF JUSTICE WILENTZ, JUSTICES CLIFFORD, HANDLER, POLLOCK, O'HERN, GARIBALDI, STEIN individually and in their official capacity as Judges of the Supreme Court of the State of New Jersey, NEW JERSEY RULES FOR ADMISSION TO THE BAR NJR 1:21 ET SEQ.;
DEBORAH T. PORITZ, individually and in her official capacity as former Attorney General of the State of New Jersey; NEW JERSEY COURT RULE 4:30A; NEW JERSEY COURT RULE 2:15-20; SETON HALL UNIVERSITY SCHOOL OF LAW, a Corporation of the State of New Jersey, THE BOARD OF REGENTS OF SETON HALL UNIVERSITY, THE TRUSTEES OF SETON HALL UNIVERSITY, THE TRUSTEES OF SETON HALL UNIVERSITY SCHOOL OF LAW, DEAN RONALD J. RICCIO, PROFESSOR CAROL R.

GOFORTH, PROFESSOR D MICHAEL RISINGER, MICHAEL ZIMMER individually and in their official capacities; The AMERICAN BAR ASSOCIATION, Defendants.
97-CV-1064
U.S. DISTRICT COURT-N.D. OF N.Y.
FILED DEC 15 1997 AT ___ O'CLOCK ___
Lawrence K. Baerman, Clerk-Binghamton

APPEARANCES: OF COUNSEL:
Michael Barth
P.O. Box 315
Liberty Corner, NJ 07938
Plaintiff Pro Se

DENNIS C. VACCO ESQ.
ATTORNEY GENERAL OF NEW YORK
The Capitol
Albany, NY 12224
For the NY Defendants

DARREN O'CONNOR,
Asst. Atty General

MEMORANDUM-DECISION & ORDER

I. BACKGROUND

This bizarre civil rights case has a long and convoluted history. Plaintiff is a New Jersey resident who has sought to take the New York State Bar Exam. Plaintiff's application to take the New York Bar Exam was denied by The New York State Board of Law Examiners because Plaintiff's law school, Seton Hall University School of Law ("Seton Hall"),

refused to forward a "Law School Certificate of Attendance" and a certification of the applicant's handwriting, which are required to take the exam. Seton Hall allegedly refused to provide the necessary certifications because Plaintiff failed to satisfy the residency requirements of the school for graduation.

The following facts are taken from a decision in a related case that Plaintiff filed in the Southern District of New York. *See* Anonymous v. Kaye, 1995 WL 617795 (S.D.N.Y. 1995), *aff'd* 104 F.3d 355 (2d Cir. 1996). Apparently, Plaintiff was a night student at Seton Hall. In the summer of 1992, a Seton Hall Professor determined that Plaintiff had plagiarized on a take-home final exam. The Professor reported the plagiarism to Associate Dean Michael J. Zimmer. Zimmer met with Plaintiff and determined that Plaintiff would receive a failing grade in the class and be suspended from the law school for one year. Plaintiff appealed to the law school's Probation and Grievance Committee, which upheld the determination that Plaintiff had plagiarized but recommended that the suspension be re-examined. Dean Riccio decided not to implement the suspension.

In August of 1993, Plaintiff sued Zimmer for defamation in the Superior Court of New Jersey, Law Division, Somerset County. Plaintiff alleged that Zimmer's letter to Plaintiff, stating the findings of plagiarism, was defamatory. Plaintiff's lawsuit was based on the premise that Plaintiff should not have been disciplined for plagiarism. Plaintiff did not sue Dean Riccio or Seton Hall at that time. On June 30, 1994, the Superior Court granted Zimmer' summary judgment on his claims. Plaintiff appealed that judgment,

which was affirmed. See Barth v. Zimmer, No. A-6632-93T2, N.J. Super. Ct. App. Div. March 24, 1995).

In 1994, Plaintiff sued many of the same defendants named here in the Southern District of New York. On July 25, 1994, Judge Keenan denied Plaintiff's motion for a preliminary injunctin allowing him to take the July 1994 New York Bar exam. *See* Anonymous v. Kaye, 1994 WL 389157 (S.D.N.Y. 1994). On October 19, 1995, Judge Keenan dismissed the action before him as against Judges Kaye, Bellacosa, Ciparick, Levine, Simons, Smith, and Titone for improper venue. *See* Anonymous v. Kaye, 1994 WL 617795 at *1. Judge Keenan Plaintiff's complaint against Justices Wilentz, Clifford, Handler, Pollock, O'Hern, Garibaldi, and Stein of the New Jersey Supreme Court for lack of personal jurisdiction and against Seton Hall University and Dean Ronald R. Riccio on res judicata grounds. Id. Plaintiff appealed the judgment, which was affirmed via summary order. Anonymous v. Kaye 104 F.3d 355 (2d Cir. 1996).

Plaintiff's Complaint contains twenty-eight causes of action. Defendants include, *inter alia*, seven judges on the New York Court of Appeals, seven justices on the New Jersey Supreme Court, the former Attorney General for the State of New Jersey, Plaintiff's former law school and law school professors, and the American Bar Association. Plaintiff's rambling Complaint alleges violations of his constitutional rights to interstate travel, due process, and equal protection, as well as RICO violations, conspiracy, injury to reputation, breach of contract, malicious prosecution, intentional infliction of emotional distress, negligence, and antitrust violations. Plaintiff seeks damages "in an amount not less than seven billion dollars."

The present motion to dismiss has been brought by the New York State Attorney General's Office on behalf of the Judges of the New York Court of Appeals, the New York State Board of Law Examiners and its members, the "New York Rules for Admission to the Bar 22 NYCRR 520 et seq.," and the "Rules of the New York State Board of Law Examiners § 6000 et seq." (hereinafter collectively referred to as "the New York Defendants").

II. DISCUSSION

Federal Rule of Civil Procedure 12(b) (6) provides that a cause of action shall be dismissed if the complaint fails "to state a claim upon which relief can be granted." In analyzing a motion to dismiss, the facts alleged by the plaintiff are assumed to be true and must be liberally construed in the light most favorable to the plaintiff. See, e.g., Easton v. Sundram, 947 F.2d 1011, 1014-15 (2d Cir. 1991), cert. denied, 504 U.S. 911 (1992). While a court need not accept mere conclusions of law, a court should accept the pleader's description of what happened along with any conclusions that can reasonably be drawn therefrom. See Murray v. City of Milford, 380 F.2d 468 (2d Cir. 1967).

Furthermore, when a party makes a Rule 12(b)(6) motion to dismiss, a court will limit the consideration to the facts asserted on the face of the complaint. Cosmas v. Hassett, 886 F.2d 8, 13 (2d Cir. 1989). A complaint will not be dismissed for failure to state a claim unless it appears, beyond a doubt, that the plaintiff can prove no set of facts that would entitle him or her to relief. See Wanamaker v. Columbian Rope Co., 740 F. Supp. 127 (N.D.N.Y. 1990).

With this standard in mind, the Court will address the sufficiency of Plaintiff's Complaint.

A. Eleventh Amendment Immunity

At this point in the history of our republic, it is clear that principles of federalism limit this Court's jurisdiction. For example, the Eleventh Amendment bars most claims against a state or agency of the state in federal court absent either waiver of immunity and consent to suit by the state, or abrogation of constitutional immunity by Congress. See e.g., Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 100 (1984); Welch v. Texas Department of Highways and Public Transp., 107 S.Ct. 2941, 2945 (1987); Atascadero State Hospital v. Scanlon, 105 S.Ct. 3142, 3145-46 (1985). A suit against a state official is regarded as one against the state itself when the relief sought against the official would operate against the state. Pennhurst, 104 S.Ct. at 906-08. In addition, a federal court may not grant relief, whether prospective or retroactive, against state officials on the basis of state law violation. Dube v. State University of New York, 900 F.2d 587, 595 (2d Cir. 1990); Jungels v. State University College of New York, 922 F.Supp. 779, 784 (W.D.N.Y. 1996), aff'd, 112 F.2d 54 (2d Cir. 1997).

Accordingly, all of Plaintiff's claims against the New York State Board of Law Examiners, the judges of the New York Court of Appeals in their *official* capacities, and the members of the New York State Board of Law Examiners in their *official* capacities are barred by the Eleventh Amendment and must be dismissed.

B. Individual Immunity

The doctrine of judicial immunity has been an established principle in our jurisprudence since Bradley v. Fisher, 80 U.S. (13 Wall.) 335 (1872). In Bradley, the Court wrote that "judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." 80 U.S. at 351. Thus, "a judge ... is entitled to absolute judicial immunity form damages liability for acts performed in his judicial capacity." Green v. Maraio, 722 F.2d 1013, 1016 (2d Cir. 1983) (citing Dennis v. Sparks,, 449 U.S. 24, 27,101 S.Ct. 183, 186 (1980)); see also Stump v. Sparkman, 435 U.S. 349, 360, 98 S.Ct. 1099, 1106 (1978). Furthermore, judges are entitled to absolute legislative immunity for actions relating to the promulgation of disciplinary rules. See Supreme Court of Virginia v. Consumers Union of the United States, Inc., 446 U.S. 719, 734, 100 S.Ct. 1967, 1975-76 (1980).

Here, there is no allegation that the judges of the New York Court of Appeals acted outside their authority as judges on New York's highest court. Accordingly, they are entitled to absolute judicial immunity and Plaintiff's claims against them in their individual capacities must also fail.

As to the members of the New York State Board of Law Examiners, they may be entitled to qualified immunity. In this circuit,

> [p]ublic officials are entitled to qualified immunity from claims for damages if (1) their conduct did not violate federal statutory or constitutional rights that were clearly established at the time, or (2) it was objectively reasonable for them to believe their acts did not violated those rights. In determining whether

> a right was clearly established, we consider (1) whether the right in question was defined with 'reasonable specificity', (2) whether the decisional law of the Supreme Court and the applicable circuit court support the existence of the right in question, and (3) whether under preexisting law a reasonable defendant official would have understood that his or her acts were unlawful.

Brown v. City of Oneonta, 106 F.3d 1125, 1130-31 (2d Cir. 1997) (citations and internal quotation marks omitted).[2]

Under either prong of this standard, it is clear that the members of the New York State Board of Law Examiners are entitled to qualified immunity. First, their conduct did not violate federal statutory or constitutional rights that re clearly established at the time. "A state can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the Bar, [provided the] qualification [has] a rational connection with the applicant's fitness or capacity to practice law." Schware v. Board of Bar Examiners, 353 U.S. 232, 239, 77 S.Ct. 752, 756 (1957).[3] Second, even if the complained of

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[2]As the Second Circuit recently noted:

> The doctrine of qualified immunity attempts to balance the strong policy of encouraging the vindication of federal civil rights by compensating individuals when those rights are violated, with the equally salutary policy of attracting capable public officials and giving them the scope to exercise vigorously the duties with which they are charged, by relieving them from the fear of being sued personally and thereby made subject to monetary liability. Rodriguez v. Phillips, 66 F.3d 470, 475 (2d Cir. 1995).

[3]Consistent with this deferential standard, courts have upheld a variety of bar-admission restrictions. *See e.g.*, Nordgren v. Hafter, 789 F.2d 334, 339-49 (5th Cir. 1986) (upholding Mississippi rule denying bar

conduct did violate clearly established rights, it was objectively reasonable for the Board of Law Examiners to believe that their acts did not violate those rights. See, e.g., Shapiro v. Cooke, 552 F. Supp, 581, 585-89 (N.D.N.Y. 1982), aff'd, 702 F.2d 46 (2d Cir. 1983) (dismissing challenge to the constitutionality of 22 NYCRR § 520.9(a), which sets forth the standards for admission to the New York State bar without examination, as not violative of equal protection, right to travel, and privileges and immunities clause.)

For the foregoing reasons, the Members of the New York State Board of Law Examiners are entitled to qualified immunity and Plaintiff's claims against them in their individual capacities must be dismissed.

C. Antitrust Violations

As to Plaintiff's antitrust claims against the New York Defendants, those claims are without merit. In Hoover v. Ronwin, 445 U.S. 558, 104 S.Ct. 1989 (1984), the plaintiff's who had failed the Arizona Bar Examination, brought suit against the members of the Arizona supreme Court Committee on Examinations and Admissions for alleged violations of the Sherman Act. The Hoover Court

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admission to graduates of out-of-State, non-ABA accredited law schools, even though similar restriction did not apply to graduates of in-State non-ABA-accredited schools); Jones v. Board of Comm'rs, 737 F.2d 996, 1001-02 (11th Cir. 1984) (upholding Alabama rule limiting to five the number of times an individual may sit for the bar examination); Lowrie v. Goldenhersh, 716 F.2d 401, 409-10 (7th Cir. 1983) (upholding Illinois rule allowing admittance of foreign-licensed attorneys only if applicant has resided and actively practices law in the outside jurisdiction for five of the seven years immediately preceding application).

determined that the actions of the committee members could not be divorced from the actions of the Arizona Supreme Court, noting that the members were appointed by the Arizona Supreme Court and the court "retained strict supervisory powers and ultimate full authority over its action s." Id at 572, 104 S.Ct. at 1997. The Court concluded that the conduct challenged was "in reality that of the Arizona Supreme Court," and therefore, the committee members were absolutely immune from antitrust liability. Hoover, 466 U.S. at 573, 104 S. Ct. at 1997.

Here, as in Hoover, the New York State Board of Law Examiners acts pursuant to the rules adopted by the New York Legislature and the New York Court of Appeals. For example, New York Judiciary Law § 53 states that "[t]he [Court of Appeals] shall prescribe rules providing for a uniform system of examination of candidates for admission to practice as attorneys and counselors, which shall govern the state board of law examiners in the performance of its duties." N.Y. Judiciary Law § 53(3) (McKinney Supp. 1997).[4] Because the Court of Appeals retains strict

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[4]New York's Judiciary Law states, in relevant part:

Rulemaking power of court of appeals as to admission of attorneys and counselors

1. The court of appeals may from time to time adopt, amend, or rescind rules not inconsistent with the constitution or statutes of the state, regulating the admission of attorneys and counselors at law, to practice in all the courts of record of the state.

2. The court may make such provisions as it shall deem proper for admission to practice as attorneys and counselors, of persons who have been admitted to practice in other states or countries.

3. The court shall prescribe rules providing for a uniform system of examination of candidates for admission to practice as attorneys and counselors, which shall govern the state board of law examiners in the performance of its duties. The court shall not by its rules cause to be

supervisory powers and ultimate full authority over the actions of the Board of Law Examiners, the Board is exempt from antitrust litigation. As the Second Circuit has instructed:

> In Hoover v. Ronwin, the court stated that when the anticompetitive conduct is undertaken by the sovereign itself, for example, through the legislature or its supreme court, that activity is *ipso facto* immune from federal antitrust laws. No further inquiry need by made.

Cine 42nd Street Theater Corp. v. Nederlander Organization, Inc., 790 F.2d 1032, 1041 (2d Cir. 1986) (citing Hoover, 104 S.Ct. at 1995 (internal citation omitted).

D. Rules for Admission to the Bar

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barred from examination or, upon successful completion of the examination process, subsequent admission to the state bar, provided he or she shall otherwise meet any requirements for admission, any person who is currently admitted to practice in the jurisdiction of another state and has received a degree from a law school which qualifies such person to practice law in such state, other than a law school which grants credit for correspondence courses, provided that such person has been engaged in the actual practice of law in the state in which they are admitted for no less than five years.

4. The rules established by the court of appeals, touching the admission of attorneys and counselors to practice in the courts of record of the state, shall not be changed or amended, except by a majority of the judges of that court. A copy of each amendment to such rules must, within five days after it is adopted, be filed in the office of the secretary of state ....

N.Y. Judiciary Law § 53.

Finally, Plaintiff brings claims against the "New York Rules for Admission to the Bar 22 NYCRR 522 *et seq.*," and the "rules of the New York State Board of Law Examiners § 6000 *et seq.*" However, Plaintiff does not identify the specific provisions being challenged, nor is it clear from the Complaint what causes of action are implicated. Thus, these claims must be dismissed.

Although a federal court must construe a *pro se* plaintiff's inartful pleading liberally, see e.g., Salahuddin v. Cuomo, 861 F.2d 40, 42 (2d Cir. 1988), this does not mean that a *pro se* plaintiff can completely disregard the pleading requirements of the Federal Rules of Civil Procedure. See Tomeo v. Allied Signal, 1997 WL 727563, *2 (N.D.N.Y. 1997). This circuit has established that "a complaint consisting of nothing more than naked assertions, and setting forth no facts upon which a court could find a violation ... fails to state a claim under Rule 12(b)(6)." Martin v. N.Y. State Dept. of Mental Hygiene, 588 F.2d 371, 372 (2d Cir. 1978) (per curiam); see also Fonte v. Board of Managers of Continental Towers Condominium, 848 F.2d 24, 25 (2d Cir. 1988) ("If a civil rights complaint is to survive a motion to dismiss, it must make specific factual allegations indicating a deprivation of rights.") As the Second Circuit has stated, a "litany of general conclusions that shock but have no meaning" are not sufficient to withstand a rules 12(b)(6) motion. Barr v. Abrams, 810 F.2d 358, 363 (2d Cir. 1987).

III. CONCLUSION

In summary, Defendants' Motion to Dismiss is GRANTED in its entirety. Plaintiff's Complaint is DISMISSED as to defendants Chief Judge Kaye, and Associate Judges Bellacosa, Ciparick, Levine, Simons, Smith, and Titone in

both their individual and official capacities, the New York Board of Law Examiners, the members of the New York Board of Law Examiners individually and in their official capacities, the New York rules for Admission to the Bar 222 NYCRR 520 *et seq*, and the Rules of the New York State Board of Law Examiners § 6000 et seq.

IT IS SO ORDERED

Binghamton, New York
December 12, 1997

signed
Hon. Thomas J. McAvoy
Chief U.S. District Judge.

Appendix D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MICHAEL BARTH, Plaintiff

-against-

CHIEF JUDGE JUDITH S. KAYE, and ASSOCIATE JUDGES JOSEPH BELLACOSA, CARMEN BEAUCHAMP CIPARICK, HOWARD A. LEVINE, RICHARD D. SIMONS, GEORGE BUNDI SMITH, and VITO J. TITONE individually and in their official capacity as Judges of the Court of Appeals of the State of New York, NEW YORK BOARD OF LAW EXAMINERS and its Members individually and in their official capacity, NEW YORK RULES FOR ADMISSION TO THE BAR 22 NYCRR 520 ESEQ., RULES OF THE NEW YORK STATE BOARD OF LAW EXAMINERS § 6000 ET SEQ.; CHIEF JUSTICE WILENTZ, JUSTICES CLIFFORD, HANDLER, POLLOCK, O'HERN, GARIBALDI, STEIN individually and in their official capacity as Judges of the Supreme Court of the State of New Jersey, NEW JERSEY RULES FOR ADMISSION TO THE BAR NJR 1:21 ET SEQ.; DEBORAH T. PORITZ, individually and in her official capacity as former Attorney General of the State of New Jersey; NEW JERSEY COURT RULE 4:30A; NEW JERSEY COURT RULE 2:15-20; SETON HALL UNIVERSITY SCHOOL OF LAW, a Corporation of the State of New Jersey, THE BOARD OF REGENTS OF SETON HALL UNIVERSITY, THE TRUSTEES OF SETON HALL UNIVERSITY, THE TRUSTEES OF SETON HALL UNIVERSITY SCHOOL OF LAW, DEAN RONALD J. RICCIO, PROFESSOR CAROL R. GOFORTH, PROFESSOR D MICHAEL RISINGER,

MICHAEL ZIMMER individually and in their official capacities; The AMERICAN BAR ASSOCIATION, Defendants.
97-CV-1064
U.S. DISTRICT COURT-N.D. OF N.Y.
FILED FEB 24 1998 AT ___ O'CLOCK ___
Lawrence K. Baerman, Clerk-Binghamton

APPEARANCES: OF COUNSEL:

Michael Barth
P.O. Box 315
Liberty Corner, NJ 07938
Plaintiff Pro Se

DENNIS C. VACCO ESQ.
ATTORNEY GENERAL OF NEW YORK
The Capitol
Albany, NY 12224
For the NY Defendants

DARREN O'CONNOR,
Asst. Atty General

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY
Trenton, NJ 08625
For the NJ Defendants

DON E. CATINELLO, ESQ.
Deputy Att'y General

SIDLEY & AUSTIN
875 Third Ave.
New York, NY 10022
For American Bar Association

JAMES D. ARDEN, ESQ.

MEMORANDUM-DECISION

& ORDER

I. BACKGROUND

The instant civil rights Complaint contains twenty-eight causes of action alleging violations of Plaintiff's constitutional rights to interstate travel, due process, and equal protection, as well as RICO violations, conspiracy, injury to reputation, breach of contract, malicious prosecution, intentional infliction of emotional distress, negligence, and antitrust violations. Plaintiff seeks damages "in an amount not less than seven billion dollars."

A. Procedural Background

As this Court stated in a prior decision in this action, "[t]his bizarre civil rights case has a long a convoluted history." December 12, 1997 Memorandum-Decision & Order at 2. In light of Plaintiff's propensity for litigating and relitigating these issues, the present decision will undoubtedly only add another chapter to the story.

Plaintiff, a graduate of Seton Hall University School of Law ("Seton Hall"), penned the first chapter of this tale in August 1993, by suing Michael Zimmer, Associate Dean of Seton Hall, for defamation. On June 30, 1994, the Superior Court of New Jersey granted Zimmer's motion for summary judgment. Plaintiff appealed that judgment, which was affirmed. *See* Barth v. Zimmer, No. A-6632-93T2, N.J. Super. Ct. App. Div. March 24, 1995).

Chapter two was penned in 1994, when Plaintiff filed a twenty-five count complaint in the Southern District of New York against many of the same defendants named here. On

October 19, 1995, Judge Keenan dismissed the action before him as against Judges Kaye, Bellacosa, Ciparick, Levine, Simons, Smith, and Titone for improper venue. See Anonymous v. Kaye, 1994 WL 389157 at *1 (S.D.N.Y. 1994). Judge Keenan also dismissed Plaintiff's complaint against Justices Wilentz, Clifford, Handler, Pollock, O'Hern, Garibaldi, and Stein of the New Jersey Supreme Court for lack of personal jurisdiction and Seton Hall University and Dean Ronald R. Riccio on *res judicata* grounds. Id. Plaintiff appealed the judgment, which was affirmed via summary order. Anonymous v. Kaye 104 F.3d 355 (2d Cir. 1996), cert. denied, 118 S.Ct. 692 (1998).

Chapter three began on January 29, 1996, Plaintiff filed a twenty-five count complaint (essentially the same complaint filed here and in the Southern District of New York) in the District of New Jersey. On September 4, 1996, Chief Judge Thompson dismissed Plaintiff's complaint on the merits, finding, *inter alia*, that *Rooker-Feldman* and New Jersey's Entire Controversy doctrine prevented the relitigation of Plaintiff's claims. See Anonymous v. Wilentz, No. 96-452 (D.N.J. Sept. 11, 1996). Plaintiff's appeal to the Third Circuit was dismissed on jurisdictional grounds. See Anonymous v. Wilentz, No. 96-5403 (3d Cir. May 5, 1997).

Chapter four sees this Court's introduction into the story. On July 25, 1997, Plaintiff filed the instant twenty-eight count Complaint. The Court previously dismissed Plaintiff's Complaint on the merits as to Chief Judge Kaye, Associate Judges Bellacosa, Ciparick, Levine, Simons, Smith, and Titone, the New York Board of Law Examiners, the members of the New York Board of Law Examiners, the New York Rules for Admission to the Bar 22 N.Y.C.R.R. 520 et seq., and the Rules of the New York State Board of

Law Examiners § 6000 et seq. See December 12, 1997, Memorandum-Decision & Order at 13.

Presently before the Court are motions to dismiss brought by the American Bar Association and former New Jersey Attorney General Deborah Poritz, as well as Plaintiff's cross motion seeking the Court's recusal, denial of attorney Catinello's *Pro Hac Vice* motion, default, a *Subpoena Duces Tecum*, a stay pending appeal, and reconsideration of the Court's prior decision dismissing the New York State Defendants.

B. Factual Background

Plaintiff is a New Jersey resident who has sought to take the New York State Bar Exam. The New York State Board of Law Examiners denied Plaintiff's application to take the New York Bar Exam because Plaintiff's law school refused to forward a "Law School Certificate of Attendance" and a certification of the applicant's handwriting, which are required to take the exam. Seton Hall allegedly refused to provide the necessary certifications because Plaintiff failed to satisfy the residency requirements of the school for graduation.

Plaintiff was a night student at Seton Hall. In the summer of 1992, a Seton Hall Professor determined that Plaintiff had plagiarized on a take-home final exam. The Professor reported the plagiarism to Associate Dean Michael J. Zimmer. Zimmer met with Plaintiff and determined that Plaintiff would receive a failing grade in the class and be suspended from the law school for one year. Plaintiff appealed to the law school's Probation and Grievance Committee, which upheld the determination that Plaintiff had plagiarized but recommended that the suspension be re-

examined. Dean Riccio decided not to implement the suspension.

In August of 1993, Plaintiff sued Zimmer for defamation in the Superior Court of New Jersey, alleging that Zimmer's letter to Plaintiff, stating the findings of plagiarism, was defamatory. Plaintiff's lawsuit was based on the premise that Plaintiff should not have been disciplined for plagiarism. Plaintiff did not sue Dean Riccio or Seton Hall at that time. The Superior Court granted Zimmer' summary judgment on his claims, which was affirmed. See Barth v. Zimmer, No. A-6632-93T2, N.J. Super. Ct. App. Div. March 24, 1995).

In 1994, Plaintiff again brought suit, this time in the Southern District of New York. On July 25, 1994, Judge Keenan denied Plaintiff's motion for injunctive relief, which would have allowed him to take the July 1994 New York Bar exam. See Anonymous v. Kaye, 1994 WL 389157, at *1. Judge Keenan subsequently dismissed Plaintiff's case in its entirety. Anonymous v. Kaye, 1995 WL 617795, at *6. In affirming the dismissal, the Second Circuit stated:

> The claims that appellant asserted against Seton Hall in the district court action arise out of appellant's plagiarism and subsequent disciplinary proceedings. Under the entire controversy doctrine, therefore, appellant should have included those claims in the lawsuit instituted in New Jersey Superior Court. Because appellant failed to include Seton Hall in that lawsuit, the district court is barred from hearing those claims.

Anonymous v. Kaye, 104 F.3d 355, 1996 WL 734074, at *2 (2d Cir. 1996) (citations omitted.)

Not content to fight his battle on only one front, Plaintiff filed, while his appeal to the Second Circuit was pending, a lengthy complaint in New Jersey federal court. In her decision, Chief Judge Anne Thompson of the District of New Jersey observed that "Plaintiff's amended complaint [filed in the Southern District of New York] continued twenty-five counts, substantially identical to the counts in the present action." Anonymous v. Wilentz, No. 96-452, slip at 4 (D.N.J. Sept. 11, 1996).

Judge Thompson dismissed Plaintiff's complaint in its entirety, noting that

> plaintiff essentially seeks to have this Court review decisions by the New Jersey state courts which upheld the disciplinary action imposed by Seton Hall Law School against plaintiff. It was solely as a result of this imposition of discipline that plaintiff was unable to take the New Jersey and New York bar exams. The Superior Court of New Jersey determined that plaintiff's rights had not been violated by Seton Hall's action, and this determination was affirmed on appeal. For this Court to exercise subject matter jurisdiction over the present controversy would necessitate a review of the state court decisions, which would be improper under the *Rooker-Feldman* doctrine. Id. at 9.

In summary, Plaintiff--proceeding under the cloak of anonymity--has litigated essentially identical claims in at least seven courts: the Superior Court of New Jersey, New Jersey Appellate Division, New Jersey Supreme Court, Southern District of New York, District of New Jersey,

Second Circuit Court of Appeals, Third Circuit Court of Appeals, and the United States Supreme Court. After allocating significant judicial resources to resolving this matter and after extensive expense on the part of his adversaries, every one of Plaintiff's prior claims have been dismissed.

II. DISCUSSION

As an initial matter, the Court notes that Plaintiff has brought this *pro se* action under the pseudonym "Anonymous" without requesting leave from the Court to do so. Rule 10(a) of the Federal Rules of Civil Procedure provides that a complaint shall state the names of all the parties. Fed. R. Civ. P. 10(a). If a party wishes to proceed under a fictitious name he must request the right to do so. See e.g., Doe v. Shakur, 164 F.R.D. 359, 360 (S.D.N.Y. 1996). "The intention of this rule is to apprise parties of who their opponents are and to protect the public's legitimate interest in knowing the facts at issue in court proceedings." Shakur, 164 F.R.D. at 360 (citing Free Market Compensation v. Commodity Exchange, Inc., 98 F.R.D. 311, 312 (S.D.N.Y. 1983), Doe v. United Servs. Life Ins. Co., 123 F.R.D. 437, 439 (S.D.N.Y. 1988), and Doe v. Deschamps, 64 F.R.D. 652, 653 (D.Mont. 1974)).

If a plaintiff requests to proceed anonymously, it is within a court's discretion to grant the request. See e.g., Doe v. Bell Atlantic Business Sys. Servs., Inc., 162 F.R.D. 418, 420 (D.Mass. 1995). In exercising its discretion, a court should consider certain factors in determining whether a plaintiff may proceed anonymously, including: (1) whether the plaintiff challenges governmental activity; (2) whether the plaintiff would be required to disclose information of the utmost intimacy; (3) whether the plaintiff would be

compelled to admit his or her intention to engage in illegal conduct, thereby risking criminal prosecution; (4) whether the plaintiff would risk suffering injury if identified; and (5) whether the party defending against a suit brought under a pseudonym would be prejudiced. Shakur, 164 F.R.D. at 360; see also James v. Jacobson, 6 F.3d 233, 238 (4th Cir. 1993); Doe v. Frank, 951 F.2d 320, 323 (11th Cir. 1992); Rowe v. Burton, 884 F.Supp. 1372, 1386 (D.Alaska 1994).

Here, Plaintiff has failed to even request the privilege of proceeding anonymously, let alone make a showing that his factual situation warrants this special treatment. Moreover, "[i]t is the exception case in which a plaintiff may proceed under a fictious name." Shakur, 164 F.R.D. at 361 (citing Frank, 951 F.2d at 323). The public has a right of access to the courts. Indeed, "lawsuits are public events and the public has a legitimate interest in knowing the facts involved in them. Among those is the identity of the parties." Deschamps, 64 F.R.D. at 653.

Accordingly, Plaintiff may not proceed anonymously and the caption of this case must be corrected to reflect that Michael Barth is the plaintiff.

A. Standard on a Motion to Dismiss

Federal Rule of Civil Procedure 12(b)(6) provides that a cause of action shall be dismissed if the complaint fails "to state a claims upon which relief can be granted." In analyzing a motion to dismiss, the facts alleged by the plaintiff are assumed to be true and must be liberally construed in the light most favorable to the plaintiff. See e.g., Easton v. Sundram, 947 F.2d 1011, 1014-15 (2d Cir. 1991), cert. denied, 504 U.S. 911 (1992). While a court need not

accept mere conclusions of law, a court should accept the pleader's description of what happened along with any conclusions that can reasonably be drawn therefrom. See Murray v. City of Milford, 380 F.2d 468 (2d Cir. 1967).

Furthermore, when a party makes a Rule 12(b)(6) motion to dismiss, a court will limit its consideration to the facts asserted on the face of the complaint. Cosmas v. Hassett, 886 F.2d 8, 13 (2d Cir. 1989). A complaint will not be dismissed for failure to state a claim unless it appears, beyond a doubt, that the plaintiff can prove no set of facts that would entitle her to relief. *See* Wanamaker v. Columbian Rope Co., 740 F.Supp. 127 (N.D.N.Y. 1990).

With this standard in mind, the Court will address the sufficiency of Plaintiff's Complaint.

B. Defendant Deborah Poritz

Plaintiff claims that defendant Deborah Poritz, former Attorney General of New Jersey, met with a New Jersey Superior Court Judge in an effort to influence the outcome of a "related Southern District" case and that "Deborah Poritz acted corruptly, that is, with the intent to influence, obstruct, or impede the Federal Proceeding in its due administration of justice." (Complaint para 7). Poritz moves to dismiss on two grounds: this Court lacks personal jurisdiction and Plaintiff's Complaint fails to state a cause of action.

In reviewing a motion to dismiss for lack of personal jurisdiction, the Court must view all pleadings and affidavits in a light most favorable to the plaintiff, resolving any doubt in the plaintiff's favor. See Hoffritz for Cutlery, Inc. v. Amajac Ltd., 763 F.2d 55, 57 (2d Cir. 1985). In order to

obtain personal jurisdiction over a defendant in New York, Plaintiff must show that New York authorizes personal jurisdiction pursuant to either section 301 or section 302 of the New York Civil Practice Law and Rules ("NYCPLR"). Plaintiff must also satisfy the constitutional requirements of due process. See e.g.,. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (requiring "certain minimum contacts [within the state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'")

"A corporation is subject to in personam jurisdiction in New York under NYCPLR section 301 when it is 'engaged' in such a continuous and systematic course of 'doing business' here as to warrant a finding of its 'presence' in this jurisdiction." Grill v. Walt Disney Co. 683 F. Supp. 66, 68 (S.D.N.Y. 1988) (citations omitted); see also Laufer v. Ostrow, 55 N.Y.2d 305, 309, 434 N.E.2d 692, 695, 449 N.Y.S.2d 456, 458 (1982).

Here, Plaintiff has not shown that Poritiz has any presence in New York, let alone that her contacts rise to the level of "doing business."

Nevertheless, Poritz may be subject to in personam jurisdiction under NYCPLR section 302, New York's long-arm statute, which provides several additional methods of obtaining jurisdiction. For Poritz to be subject to personal jurisdiction under NYCPLR section 302 (c)(1), she must "transact [ ]business within the state or contract [ ]anywhere to supply goods or services in the state." Section 302(c)(2) permits an exercise of personal jurisdiction where a tortious act has occurred within the state and NYCPLR section 302(c)(3) provides for personal jurisdiction in instances

where a tort has been committed outside the state causing injuries within the state. Finally, NYCPLR section 302(c)(4) permits jurisdiction to lie where the defendant "owns, uses or possesses any real property situated within the state."

Even a cursory review of Plaintiff's Complaint demonstrates that he has failed to satisfy any section of New York's long-arm statute. As Judge Keenan stated in Plaintiff's prior case filed in the Southern District, where "an exercise of personal jurisdiction is improper, it is unnecessary for this Court to proceed further to analyze the constitutionality of that exercise. This Court lacks jurisdiction ...." Anonymous v. Kaye, 1995 WL 617795, at *4.

Similarly, this Court lacks personal jurisdiction over Deborah Poritz, and Plaintiff's Complaint is therefore dismissed as to her.

C. Defendant American Bar Association

Defendant American Bar Association moves to dismiss on the grounds that Plaintiff's Complaint is (1) barred by *res judicata*; (2) barred by the *Rooker-Feldman* doctrine; (3) barred by New Jersey' entire controversy doctrine; and (3) fails to state a claim.

Under the doctrine of *res judicata*, a "final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Burgos v. Hopkins, 14 F.3d 787, 789 (2d Cir. 1994) (quoting Allen v. McCurry, 449 U.S. 90, 94, 101 S.Ct. 411, 414, 66 L.Ed.2d 308 (1980)). Under both New York law and federal law, "the doctrine states that once a final judgment has been entered on the merits of a case, that judgment will

bar any subsequent litigation by the same parties or those in privity with them concerning 'the transaction, or series of connected transactions, out of which the [first] action arose." Maharaj v. BankAmerica Corp., 128 F.3d 94, 97 (2d Cir. 1997) citing Restatement (Second) of Judgments § 24(1) (1982).

In determining whether a second suit is barred by this doctrine, the fact that the first and second suits involved the same parties, similar legal issues, similar facts, or essentially the same type of wrongful conduct is not dispositive. S.E.C. v. First Jersey Sec., Inc., 101 F.3d 1450, 1463 (2d Cir. 1996), cert. denied, 118 S.Ct. 57 (1997). The first judgment will only preclude a second suit when it involves the same "transaction" or connected series of transactions as the earlier suit; in other words, "the second cause of action requires the same evidence to support it and is based on facts that were also present in the first." Maharaj, 128 F.3d at 97.

Under New York's transactional approach to *res judicata*, however, the doctrine bars "a later claim arising out of the same factual grouping as an earlier litigated claim even if the later claim is based on different legal theories or seeks dissimilar or additional relief." Burgos, 14 F.3d at 790 (citing Smith v. Russell Sage College, 54 N.Y.2d 185, 445 N.Y.S.2d 68, 71, 429 N.E.2d 746 (1981).

Turning to the facts here, it is clear that Plaintiff's complaint is barred. Judge Thompson of the District of New Jersey described Plaintiff's complaint against the ABA in her court as follows: "Plaintiff has alleged six counts against the ABA: two federal antitrust counts, violation of the New York and New Jersey state antitrust laws, breach of contract, negligence and 'breach of law of associations." Anonymous

v. Wilentz, No. 96-452, slip at 14. There are essentially the same claims Plaintiff has brought here; those that are not precisely the same are nevertheless based on the same set of core facts.

Ironically, Judge Thompson dismissed most of Plaintiff's claims on *res judicata* grounds. The same disposition is required here. Because Plaintiff's present claims against the ABA are barred by the doctrine of *res judicata*, they must be dismissed.

D. Plaintiff's Cross-Motion

Plaintiff makes a number of requests in the form of a cross-motion seeking the Court's recusal, denial of attorney Catinello's *Pro Hac Vice* motion, default, a *subpoena Duces Tecum*, a stay pending appeal, and reconsideration of the Court's prior decision dismissing the New York State Defendants. Although all of Plaintiff's requests are without merit, the Court will address two issues Plaintiff has raised that deserve mention.

First, Plaintiff moves for this Court's recusal because the Court used the following phrase: "this bizarre civil rights case has a long a convoluted history." December 12, 1997 Memorandum-Decision & Order at 2. Plaintiff asserts the Court has shown bias against him.

Under 28 U.S.C. § 455 (a), "[a]ny justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). In particular, a judge must disqualify himself when he has "a personal bias or prejudice concerning a party." 28 U.S.C. §455 (b)(1). In

determining whether recusal is warranted, the test of impartiality is "what a reasonable person, knowing and understanding all the facts and circumstances, would believe." In re Drexel Burnham Lambert, Inc., 861 F.2d 1307, 1309 (2d Cir. 1988); see also SEC v. Grossman, 887 F.Supp. 649, 658 (S.D.N.Y. 1995), aff'd, 101 F.3d 109 (2d Cir. 1996). It is well-settled, however, that a judge has "an affirmative duty ... not to disqualify himself unnecessarily." National Auto Brokers Corp. v. General Motors Corp. 572 F.2d 953, 958 (2d Cir. 1978).

The Court's description of this case as "bizarre" and "convoluted" is apt and does not demonstrate bias. Accordingly, Plaintiff's motion for recusal is denied.

Plaintiff also seeks reconsideration of the Court's prior decision dismissing the New York State Defendants. Reconsideration of a prior decision is discretionary, and the factors that generally compel reconsideration are "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear or prevent manifest injustice." Virgin Atlantic Airways Ltd. v. National Mediation Bd., 956 F.2d 1245, 1255, (2d Cir. 1992). A Court is disinclined to reconsider a prior decision unless a party has satisfied one of these three factors.

In this instance, Plaintiff's motion does not implicate any of the three factors warranting reconsideration. Instead, Plaintiff merely reiterates the same arguments that the Court rejected in his original opposition papers. Thus, Plaintiff's Motion for Reconsideration must be denied.

E. Sua Sponte Dismissal and Sanctions

While a *res judicata* defense is "ordinarily" not to be recognized when not raised in the answer, no absolute bar to the consideration of such claims exists. Salahuddin v. Jones, 992 F.2d 447, 449 (2d Cir. 1993) (citing Davis v. Bryan, 810 F.2d 42, 44 (2d Cir. 1987) and Carbonell v. Louisiana Dep't of Health & Human Resources, 772 F.2d 185, 189 (5th Cir. 1985) (court may dismiss sua sponte on res judicata grounds provided it either has before it "all relevant data and legal records" or is in the same district in which the original action was filed.)). Moreover, a district court has the power to *sua sponte* dismiss a claim that is meritless. See id.

Though a district court has the power to dismiss a complaint *sua sponte* for failure to state a claim on which relief can be granted, it may not properly do so without giving the plaintiff an opportunity to be heard. *See e.g.*, Thomas v. Scully, 943 F.2d 259, 260 (2d Cir. 1991); Perez v. Ortiz, 849 F.2d 793, 797 (2d Cir. 1988). Accordingly, the Court hereby orders Plaintiff to show cause why the instant Complaint should not be dismissed, on *res judicata* grounds, as against the remaining defendants.

Furthermore, the Court hereby orders Plaintiff to show cause why he should not be sanctioned under Rule 11 of the Federal Rules of Civil Procedure for filing a vexatious and meritless Complaint. Rule 11 was created to deter dilatory and abusive tactics in litigation and to streamline the litigation process by lessening frivolous claims or defenses. The rule provides, in pertinent part:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleadings, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's

> knowledge, information and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims ... therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; [and]
>
> (3) the allegations and other factual contentions have evidentiary support or ... are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery ....

Fed. R. Civ. P. 11(b). Imposition of Rule sanctions does not require a finding of bad faith. Rather, "[t]he test as to whether an attorney [or party] made a reasonable inquiry prior to signing a pleading is an objective standard of reasonableness under the circumstances at the time the attorney [or party] acted." EEOC v. Tandem Computers, Inc. 158 F.R.D. 224, 227 (D. Mass. 1994).

Rule 11 requires litigants to take responsibility for the claims they present by requiring a reasonable inquiry to assure that the claims represented are well-grounded in both law and fact. Tandem Computers, Inc., 158 F.R.D. at 227. In layman's terms, Rule 11 "require[s] litigants to 'stop-and-think' before initially making legal or factual contentions. Fed. R. Civ. P. 11, Advisory Committee Notes (1993 Amendment).

III. CONCLUSION

In summary, Defendants' Motions to Dismiss are GRANTED in their entirety. Plaintiff's Complaint is DISMISSED as to defendants Deborah Poritz and the American Bar Association.

Plaintiff's Cross-Motion is DENIED in its entirety. Plaintiff may not proceed anonymously and the caption of this case is hereby corrected to reflect that Michael Barth is the plaintiff.

Furthermore, the Court hereby orders Plaintiff to SHOW CAUSE at the Court's regular motion term on March 27, 1998, at 10:00 am in Binghamton, New York, why the remaining defendants should not be dismissed and why Plaintiff should not be sanctioned for filing a vexatious and meritless Complaint.[5]

IT IS SO ORDERED

Binghamton, New York
February 24, 1998

signed
Hon. Thomas J. McAvoy
Chief U.S. District Judge.

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[5]Plaintiff's response papers are due no later than March 13, 1998. If any defendants choose to respond, their papers are due no later than March 20, 1998.

Appendix E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MICHAEL BARTH, Plaintiff

-against-

CHIEF JUDGE JUDITH S. KAYE, and ASSOCIATE JUDGES JOSEPH BELLACOSA, CARMEN BEAUCHAMP CIPARICK, HOWARD A. LEVINE, RICHARD D. SIMONS, GEORGE BUNDI SMITH, and VITO J. TITONE individually and in their official capacity as Judges of the Court of Appeals of the State of New York, NEW YORK BOARD OF LAW EXAMINERS and its members individually and in their official capacity, NEW YORK RULES FOR ADMISSION TO THE BAR 22 NYCRR 520 et seq., RULES OF THE NEW YORK STATE BOARD OF LAW EXAMINERS § 6000 et seq.; CHIEF JUSTICE WILENTZ, JUSTICES CLIFFORD, HANDLER, POLLOCK, O'HERN, GARIBALDI, STEIN individually and in their official capacity as Judges of the Supreme Court of the State of New Jersey, NEW JERSEY RULES FOR ADMISSION TO THE BAR NJR 1:21 ET SEQ.; DEBORAH T. PORITZ, individually and in her official capacity as former Attorney General of the State of New Jersey; NEW JERSEY COURT RULE 4:30A; NEW JERSEY COURT RULE 2:15-20; SETON HALL UNIVERSITY SCHOOL OF LAW, a Corporation of the State of New Jersey, THE BOARD OF REGENTS OF SETON HALL UNIVERSITY, THE TRUSTEES OF SETON HALL UNIVERSITY, THE TRUSTEES OF SETON HALL UNIVERSITY SCHOOL OF LAW, DEAN RONALD J. RICCIO, PROFESSOR CAROL R. GOFORTH, PROFESSOR D MICHAEL RISINGER,

MICHAEL ZIMMER individually and in their official capacities; The AMERICAN BAR ASSOCIATION, Defendants.
97-CV-1064
U.S. DISTRICT COURT-N.D. OF N.Y.
FILED APR 21 1998 AT ___ O'CLOCK ___
Lawrence K. Baerman, Clerk-Binghamton

APPEARANCES: OF COUNSEL:

Michael Barth
P.O. Box 315
Liberty Corner, NJ 07938
Plaintiff Pro Se

DENNIS C. VACCO
ESQ.
ATTORNEY GENERAL
OF NEW YORK
The Capitol
Albany, NY 12224
For the NY Defendants

DARREN O'CONNOR,
Asst. Atty General

PETER VERNIERO
ATTORNEY GENERAL
OF NEW JERSEY
Trenton, NJ 08625
For the NJ Defendants

DON E. CATINELLO, ESQ.
Deputy Att'y General

SIDLEY & AUSTIN
875 Third Ave.
New York, NY 10022
For American Bar Association

JAMES D. ARDEN, ESQ.

MEMORANDUM-DECISION

& ORDER

I. BACKGROUND

The instant civil rights Complaint contains twenty-eight causes of action alleging violations of Plaintiff Michael Barth's constitutional rights to interstate travel, due process, and equal protection, as well as RICO violations, conspiracy, injury to reputation, breach of contract, malicious prosecution, intentional infliction of emotional distress, negligence, and antitrust violations. Plaintiff seeks damages "in an amount not less than seven billion dollars."

A detailed factual account of the present litigation can be found in this court's previous decisions. See Anonymous v. Kaye, 987 F. Supp. 131 (N.D.N.Y. 1997); Barth v. Kaye, 1998 WL 88513 (N.D.N.Y. 1998).

A. PROCEDURAL BACKGROUND

In August 1993, Michael Barth sued Michael Zimmer, Associate Dean of Seton Hall University School of Law, for defamation. On June 30, 1994, the Superior Court of New Jersey granted Zimmer's motion for summary judgment. Plaintiff appealed that judgment, which was affirmed. *See* Barth v. Zimmer, No. A-6632-93T2, N.J. Super. Ct. App. Div. March 24, 1995).

In 1994, Plaintiff brought suit in the Southern District of New York. Judge Keenan dismissed Judges Kaye, Bellacosa, Ciparick, Levine, Simons, Smith, and Titone for improper venue. See Anonymous v. Kaye, 1994 WL 389157 (S.D.N.Y. 1994). Judge Keenan also dismissed Justices Wilentz, Clifford, Handler, Pollock, O'Hern, Garibaldi, and

Stein of the New Jersey Supreme Court for lack of personal jurisdiction and Seton Hall University and Dean Ronald R. Riccio on *res judicata* grounds. See Anonymous v. Kaye, 1995 WL 617795 (S.D.N.Y. 1995). Plaintiff appealed the judgment, which was affirmed via summary order. Anonymous v. Kaye 104 F.3d 355 (2d Cir. 1996), cert. denied, 118 S.Ct. 692 (1998).

On January 29, 1996, Plaintiff filed a twenty-five count complaint (essentially the same complaint filed here and in the Southern District of New York) in the District of New Jersey. Chief Judge Thompson dismissed Plaintiff's complaint on the merits, finding, *inter alia*, that *Rooker-Feldman* and New Jersey's Entire Controversy doctrine prevented the relitigation of Plaintiff's claims against the Justices of the New Jersey Supreme Court, Seton Hall University, and the American Bar Association. See Anonymous v. Wilentz, No. 96-452 (D.N.J. Sept. 11, 1996). Plaintiff's appeal to the Third Circuit was dismissed on jurisdictional grounds. See Anonymous v. Wilentz, No. 96-5403 (3d Cir. May 5, 1997).

On July 25, 1997, Plaintiff filed the instant twenty-eight count Complaint. The Court dismissed Plaintiff's Complaint on the merits as to Chief Judge Kaye, Associate Judges Bellacosa, Ciparick, Levine, Simons, Smith, and Titone, the New York Board of Law Examiners, the members of the New York Board of Law Examiners, the New York Rules for Admission to the Bar 22 N.Y.C.R.R. 520 et seq., and the Rules of the New York State Board of Law Examiners § 6000 et seq. See Anonymous v. Kaye, 987 F.Supp. 131 (N.D.N.Y. 1997). On February 24, 1998, the Court dismissed defendant Deborah Poritz for lack of personal jurisdiction and defendant American Bar Association on the

basis of *res judicata*. *See* Barth v. Kaye, 1998 WL 88513 (N.D.N.Y. 1998). The Court also ordered that Plaintiff may not proceed anonymously. Id.

Furthermore, the Court ordered Plaintiff to show cause at the Court's regular motion term on March 27, 1998, at 10:00 am in Binghamton, New York, why the remaining defendants should not be dismissed and why Plaintiff should not be sanctioned for filing a vexatious and meritless Complaint. Id. Presently at issue is the Court's *sua sponte* motion to dismiss and motion for sanctions.

II. DISCUSSION

A. Dismissal of the Remaining Defendants

Federal Rule of Civil Procedure 12(b) (6) provides that a cause of action shall be dismissed if the complaint fails "to state a claim upon which relief can be granted." In analyzing a motion to dismiss, the facts alleged by the plaintiff are assumed to be true and must be liberally construed in the light most favorable to the plaintiff. See, e.g., Easton v. Sundram, 947 F.2d 1011, 1014-15 (2d Cir. 1991), cert. denied, 504 U.S. 911 (1992). While a court need not accept mere conclusions of law, a court should accept the pleader's description of what happened along with any conclusions that can reasonably be drawn therefrom. See Murray v. City of Milford, 380 F.2d 468 (2d Cir. 1967).

Furthermore, on a motion to dismiss a court will limit the consideration to the facts asserted on the face of the complaint. Cosmas v. Hassett, 886 F.2d 8, 13 (2d Cir. 1989). A complaint will not be dismissed for failure to state a claim unless it appears, beyond a doubt, that the plaintiff can prove

no set of facts that would entitle him or her to relief. See Wanamaker v. Columbian Rope Co., 740 F. Supp. 127 (N.D.N.Y. 1990).

While a *res judicata* defense is "ordinarily" not to be recognized when not raised in the answer, no absolute bar to the consideration of such claims exists. Salahuddin v. Jones, 992 F.2d 447, 449 (2d Cir. 1993) (citing Davis v. Bryan, 810 F.2d 42, 44 (2d Cir. 1987) and Carbonell v. Louisiana Dep't of Health & Human Resources, 772 F.2d 185, 189 (5th Cir. 1985) (court may dismiss *sua sponte* on *res judicata* grounds provided it either has before it "all relevant data and legal records" or is in the same district in which the original action was filed.)). Moreover, a district court has the power to *sua sponte* dismiss a claim that is meritless. See id.

Though a district court has the power to dismiss a complaint *sua sponte* for failure to state a claim on which relief can be granted, it may not properly do so without giving the plaintiff an opportunity to be heard. See e.g., Thomas v. Scully, 943 F.2d 259, 260 (2d Cir. 1991); Perez v. Ortiz, 849 F.2d 793, 979 (2d Cir. 1988). Accordingly, on February 24, 1998, the Court directed "Plaintiff to show cause why the instant Complaint should not be dismissed, on *res judicata* grounds, as against the remaining defendants." Barth, 1998 WL 88513, at *7.

The following defendants remain in the present litigation (hereinafter referred to as the "New Jersey Defendants"): Chief Justice Wilentz, Justices Clifford, Handler, Pollock, O'Hern, Garibaldi, and Stein of the New Jersey Supreme Court; the New Jersey Rules for Admission to the Bar NJR 1:21 et seq.; New Jersey Court Rule 4:30A; New Jersey Court Rule 2:15-20; Seton Hall University School of Law;

the Board of Regents of Seton Hall University; the Trustees of Seton Hall University; the Trustees of Seton Hall University School of Law; Dean Ronald R. Riccio; and professors Carol R. Goforth, D. Michael Risinger, and Michael Zimmer. Although it appears that the New Jersey Defendants have not been properly served with Plaintiff's Complaint, the Court finds compelling reasons to *sua sponte* dismiss Plaint's claim as against these defendants because the remaining claims are meritless.

i Previous Litigation

Plaintiff -- proceedings under the cloak of anonymity -- has litigated essentially identical claims in at least seven courts: the Superior Court of New Jersey, New Jersey Appellate Division, New Jersey Supreme Court, Southern District of New York, District of New Jersey, Second Circuit Court of Appeals, Third Circuit Court of Appeals, and the United States Supreme Court. As this Court has noted: "After allocating significant judicial resources to resolving this matter and after extensive expense on the part of his adversaries, every one of Plaintiff's prior claims have been dismissed. " Barth, 1998 WL 88513, at *3.

Under the doctrine of *res judicata*, "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Burgos v. Hopkins, 14 F.3d 787, 789 (2d Cir. 1994) (quoting Allen v. McCurry, 101 S.Ct. 411, 414 (1980)). Under both New York law and federal law, "the doctrine states that once a final judgment has been entered on the merits of a case, that judgment will bar any subsequent litigation by the same parties or those in privity with them concerning 'the transaction, or series of connected

transactions, out of which the [first] action arose." Maharaj v. BankAmerica Corp., 128 F.3d 94, 97 (2d Cir. 1997) citing Restatement (Second) of Judgments § 24(1) (1982)).

In determining whether a second suit is barred by this doctrine, the fact that the first and second suits involved the same parties, similar legal issues, similar facts, or essentially the same type of wrongful conduct is not dispositive. S.E.C. v. First Jersey Sec., Inc., 101 F.3d 1450, 1463 (2d Cir. 1996), cert. denied, 118 S.Ct. 57 (1997). The first judgment will only preclude a second suit when it involves the same "transaction" or connected series of transactions as the earlier suit; in other words, "the second cause of action requires the same evidence to support it and is based on facts that were also present in the first." Maharaj, 128 F.3d at 97.

Under New York's transactional approach to *res judicata*, however, the doctrine bars "a later claim arising out of the same factual grouping as an earlier litigated claim even if the later claim is based on different legal theories or seeks dissimilar or additional relief." Burgos, 14 F.3d at 790 (citing Smith v. Russell Sage College, 54 N.Y.2d 185, 445 N.Y.S.2d 68, 71, 429 N.E.2d 746 (1981).

Turning to the facts here, it is clear that Plaintiff's claims against the New Jersey Defendants are barred. For example, Plaintiff previously brought suit against the Justices of the New Jersey Supreme Court in the Southern District of New York, where they were dismissed for lack of personal jurisdiction, and in the District of New Jersey, where they were dismissed on the merits based on the Rooker-Feldman and New Jersey Entire Controversy doctrine. Plaintiff previously brought suit against Seton hall University and its Trustees in the Southern District of New York, where they

were dismissed on *res judicata* grounds, and the in the District of New Jersey, where they were also dismissed on *res judicata* grounds.

In affirming the Southern District's dismissal of plaintiff's claims, the Second Circuit stated:

> The claims that appellant asserted against Seton Hall in the district court action arise out of appellant's plagiarism and subsequent disciplinary proceedings. Under the entire controversy doctrine, therefore, appellant should have included those claims in the lawsuit instituted in New Jersey Superior Court. Because appellant failed to include Seton Hall in that lawsuit, the district court is barred from hearing those claims.

Anonymous v. Kaye, 104 F.3d 355, 1996 WL 734074, at *2 (2d Cir. 1996) (citations omitted). Plaintiff's previously rejected claims are essentially the same claims Plaintiff has brought here; those that are not precisely the same are nevertheless based on the same set of core facts.

Consequently, Plaintiff's claims against the New Jersey Defendants are barred and must be dismissed.

C. Sanctions

In its February 24, 1998 Order, the Court directed Plaintiff to show cause why he should not be sanctioned under Rule 11 of the Federal Rules of Civil Procedure for filing a vexatious and meritless Complaint.

Rule 11 was created to deter dilatory and abusive tactics in litigation and to streamline the litigation process by lessening frivolous claims or defenses. The rule provides, in pertinent part:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleadings, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances:
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> (2) the claims ... therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; [and]
> (3) the allegations and other factual contentions have evidentiary support or ... are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery ....

Fed. R. Civ. P. 11(b). Imposition of Rule sanctions does not require a finding of bad faith. Rather, "[t]he test as to whether an attorney [or party] made a reasonable inquiry prior to signing a pleading is an objective standard of reasonableness under the circumstances at the time the attorney [or party] acted." EEOC v. Tandem Computers, Inc. 158 F.R.D. 224, 227 (D. Mass. 1994).

Rule 11 requires litigants to take responsibility for the claims they present by requiring a reasonable inquiry to assure that the claims represented are well-grounded in both law and

fact. Tandem Computers, Inc., 158 F.R.D. at 227. In layman's terms, Rule 11 "require[s] litigants to 'stop-and-think' before initially making legal or factural contentions." Fed. R. Civ. P. 11, Advisory Committee Notes (1993 Amendment).

Although Plaintiff's entire Complaint is meritless, his present claims against the American Bar Association ("ABA") are particularly frivolous. Judge Thompson of the District of New Jersey described Plaintiff's complaint against the ABA in her court as follows: "Plaintiff has alleged six counts against the ABA: two federal antitrust counts, violation of the New York and New Jersey state antitrust laws, breach of contract, negligence and 'breach of law of associations." Anonymous v. Wilentz, No. 96-452, slip at 14.

Judge Thompson dismissed the claims against the ABA, noting:

> Under the Rooker-Feldman doctrine, discussed above, plaintiff cannot obtain review from this Court of a state court judgment ... [T]he New York courts have already ruled on plaintiff's claims that he should have been allowed to take the 1994 New York bar exam. Moreover, the New Jersey state courts have also considered the cornerstone of plaintiff's lawsuit. [Furthermore,] the New Jersey entire controversy doctrine also operates to bar plaintiff's counts against the ABA with the exception of the federal antitrust allegations. Id. at 14.

The claims that Judge Thompson dismissed on the merits are essentially the same claims Plaintiff seeks to litigate here. Once Judge Thompson ruled that these claims against the

ABA were barred, Plaintiff's attempt to re-litigate the claims here was frivolous. Thus, Plaintiff's actions appear to be sanctionable under Rule 11 (b) (2) (legal contentions must be "warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law"). "An argument constitutes a frivolous legal position for purposes of Rule 11 sanctions if, under an objective standard of reasonableness, it is clear ... that there is not chance of success and no reasonable argument to extend, modify or reverse the law as it stands." Caisse Nationale de Credit Agricole-CNCA v. Valcorp. Inc., 28 F.3d 259, 264 (2d Cir. 1994) (internal quotation marks and citations omitted.)

There are several factors the district should consider in determining whether sanctions are warranted:

> In determining the reasonableness of a legal inquiry, a court may consider the time available to the attorney [or party]; the plausibility of the legal view contained in the document; the *pro se* status of a litigant; and the complexity of the legal and factual issues raised.

Smith v. Our Lady of the Lake Hospital, 960 F.2d 439, 444 (5th Cir. 1992). Even where a party is proceeding *pro se*, however, a court must still look objectively at his pleadings in resolving the question of whether he violated Rule 11. Chambers v. American Trans Air, Inc., 17 F.2d 998, 1006 (7th Cir. 1994); Leistikow v. Mangerson, 172 F.R.D. 403, 406 (E.D.Wis. 1997); Durant v. Traditional Investments, Ltd., 135 F.R.D. 42, 49 (S.D.N.Y. 1991) ("*Pro se*filings do not serve as 'impenetrable shield, for one acting *Pro Se* has no license to harass others, clog the judicial machinery with

meritless litigation, and abuse already overloaded court dockets." (quoting Patterson v. Aiken, 841 F.2d 386 (11th Cir. 1988)).

Here, the facts and legal issues involved support the imposition of sanctions. First, although Plaintiff is appearing *pro se*, he has more than a rudimentary legal background as evidenced by his graduation from Seton Hall University School of Law. Second, Plaintiff has been litigating these claims since August 1993 and has had ample time to reconsider his legal strategy. Third, the issue of *res judicata* in the present context is not a complex legal question; in fact, Judge Thompson expressly ruled that Plaintiff's present claims against the ABA were barred in her court by Plaintiff's previous litigation. Finally, plaintiff has demonstrated a propensity to continue this meritless litigation in any federal or state forum he can find, regardless of its costs.

For these reasons the Court finds that a sanction of one-thousand five-hundred ($1,500.00) dollars to be paid to the American Bar Association not cover its fees and expenses in defending against Plaintiff's claims is an appropriate sanction for filing a vexatious and meritless Complaint.

III. CONCLUSION

In summary, Plaintiff's Complaint is DISMISSED as to all remaining defendants: Chief Justice Wilentz, Justices Clifford, Handler, Pollock, O'Hern, Garibaldi, and Stein of the New Jersey Supreme Court; the New Jersey Rules for Admission to the Bar NJR 1:21 *et seq.*, New Jersey Court Rule 4:30A; New Jersey Court Rule 2:15-20; Seton Hall University School of Law; the Board of Regents of Seton

Hall University; the Trustees of Seton Hall University; the Trustees of Seton Hall University School of Law; Dean Ronald R. Riccio; and professors Carol R. Goforth, D. Michael Risinger, and Michael Zimmer.

Furthermore, Plaintiff is hereby ORDERED to pay one-thousand five-hundred ($1,500.00) dollars to the American Bar Association to cover its fees and expenses in defending against Plaintiff's meritless claims.

The Clerk is ORDERED to close the file

IT IS SO ORDERED

Binghamton, New York
April 18, 1998

signed
Hon. Thomas J. McAvoy
Chief U.S. District Judge.

Appendix E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MICHAEL BARTH,
Plaintiff

JUDGMENT IN A CIVIL CASE

vs.

CASE NO. 97-cv-1064

CHIEF JUDGE JUDITH S. KAYE, et al
Defendants.

__ JURY VERDICT. this action came before this Court for a trial by jury. the issues have been tried and the jury has rendered its verdict.

X DECISION BY COURT. This action came to trial of hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED Plaintiff's Complaint is DISMISSED as to all remaining Defts and Pltf. is hereby ORDERED to pay $1,500 to the American Bar Association to cover its fees and expenses in defending against Pltf's meritless claims

Dated: April 23, 1998

LAWRENCE K. BAERMAN, Clerk of the Court
Signed By: Deputy Clerk

U.S. DISTRICT COURT-N.D. OF N.Y.
FILED APR 23 1998
AT ___ O'CLOCK ___
Lawrence K. Baerman, Clerk-Binghamton

United States Constitution, Article IV
Section 1.
Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.
Section 2.
The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime. No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

United States Constitution, Fourteenth Amendment
Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

18 U.S.C. §§ 1961 Definitions: As used in this chapter - (1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery,

extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits,

and other documents), sections 1581-1588 (relating to peonage and slavery), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities,

or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain. (2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof; (3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property; (4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity; (5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity; (6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the

United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate; (7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter; (8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter; (9) "documentary material" includes any book, paper, document, record, recording, or other material; and (10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

18 U.S.C. Section 1965. Venue and process

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

42 U.S.C. Section 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

Section 1985. Conspiracy to interfere with civil rights

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy;

in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.